Also, a bill (H. R. 4450) granting a pension to Job Davis; to the Committee on Invalid Pensions.

Also, a bill (H. R. 4451) granting an increase of pension to Kesiah Trembly; to the Committee on Invalid Pensions.

Also, a bill (H. R. 4452) granting an increase of pension to Cyrena Trahern; to the Committee on Invalid Pensions.

Also, a bill (H. R. 4453) granting a pension to Rhoda Benson; to the Committee on Invalid Pensions.

Also, a bill (H. R. 4454) granting a pension to Dora Etta Miller; to the Committee on Invalid Pensions.

Also, a bill (H. R. 4455) granting a pension to Mary J. Hovatter; to the Committee on Invalid Pensions.

Also, a bill (H. R. 4456) granting an increase of pension to Mary A. Snyder; to the Committee on Invalid Pensions.

Also, a bill (H. R. 4457) granting a pension to Washington Roy; to the Committee on Invalid Pensions.

Also, a bill (H. R. 4458) for the relief of James A. Adams; to the Committee on Military Affairs.

By Mr. COCHRAN of Missouri: A bill (H. R. 4459) for the relief of the United States Bank of St. Louis, Mo.; to the Committee on Ways and Means.

Also, a bill (H. R. 4460) granting a pension to Charles Hanneman; to the Committee on Pensions.

By Mr. DEMPSEY: A bill (H. R. 4461) granting a pension to Lettie E. Deyo; to the Committee on Invalid Pensions.

By Mr. FITZGERALD: A bill (H. R. 4462) granting a pension to Elizabeth Brown; to the Committee on Pensions.

Also, a bill (H. R. 4463) granting a pension to Celestie R. Leon; to the Committee on Invalid Pensions.

By Mr. FRENCH: A bill (H. R. 4464) for the relief of the estate of Lafayette Keene (Wade Keene, executor); to the Committee on Ways and Means.

By Mr. HESS: A bill (H. R. 4465) granting a pension to Charles E. Ridenour; to the Committee on Pensions.

Also, a bill (H. R. 4466) granting a pension to Louis Ruebusch; to the Committee on Pensions.

Also, a bill (H. R. 4467) granting an increase of pension to Maggie Meyer; to the Committee on Invalid Pensions.

By Mr. HUDSPETH: A bill (H. R. 4468) granting a pension to Concepcion Roybal; to the Committe on Pensions.

Also, a bill (H. R. 4469) for the relief of Second Lieut. Burgo D. Gill; to the Committee on Claims.

By Mr. KELLY: A bill (H. R. 4470) granting an increase of pension to S. Bell Leader; to the Committee on Invalid Pensions.

Also, a bill (H. R. 4471) granting an increase of pension to Ella E. Murray; to the Committee on Invalid Pensions.

Also, a bill (H. R. 4472) granting an increase of pension to Agnes G. Overholt; to the Committee on Invalid Pensions.

Also, a bill (H. R. 4473) granting a pension to Nellie Julia Ellen Snyder; to the Committee on Invalid Pensions.

Also, a bill (H. R. 4474) granting a pension to Ella M. Butterfield; to the Committee on Invalid Pensions.

By Mr. KENDALL of Pennsylvania: A bill (H. R. 4475) granting an increase of pension to Henrietta McNutt; to the Committee on Invalid Pensions.

By Mr. MILLIGAN: A bill (H. R. 4476) granting an increase of pension to Sallie R. Bryant; to the Committee on Invalid Pensions.

Also, a bill (H. R. 4477) granting an increase of pension to Lucinda J. Ray; to the Committee on Invalid Pensions.

Also, a bill (H. R. 4478) granting an increase of pension to Sarah A. Baynes; to the Committee on Invalid Pensions.

Also, a bill (H. R. 4479) granting a pension to Martha E. Goodwin and her dependent daughter, Edna E. Goodwin; to the Committee on Invalid Pensions.

Also, a bill (H. R. 4480) granting an increase of pension to Sarah E. Elliott and a pension to her dependent son, Earl Elliott; to the Committee on Invalid Pensions.

Also, a bill (H. R. 4481) granting a pension to Anderson T. Redding; to the Committee on Invalid Pensions.

By Mr. ROWBOTTOM: A bill (H. R. 4482) granting a pension to Ernest Killian; to the Committee on Pensions.

Also, a bill (H. R. 4483) granting an increase of pension to Ellen S. Epperson; to the Committee on Invalid Pensions.

Also, a bill (H. R. 4484) granting a pension to Birdia Alice Townsley; to the Committee on Invalid Pensions.

Also, a bill (H. R. 4485) granting an increase of pension to Mary E. Small; to the Committee on Invalid Pensions.

Also, a bill (H. R. 4486) granting an increase of pension to Lucinda Hall; to the Committee on Invalid Pensions.

Also, a bill (H. R. 4487) granting an increase of pension to Eliza Jaco; to the Committee on Invalid Pensions.

Also, a bill (H. R. 4488) granting an increase of pension to Maria Berry; to the Committee on Invalid Pensions.

Also, a bill (H. R. 4489) granting an increase of pension to Emily F. Wall; to the Committee on Invalid Pensions.

Also, a bill (H. R. 4490) granting an increase of pension to Ora S. Wray; to the Committee on Invalid Pensions.

Also, a bill (H. R. 4491) granting an increase of pension to Mena Ebricht; to the Committee on Invalid Pensions.

Also, a bill (H. R. 4492) granting an increase of pension to Carrie McCoy; to the Committee on Invalid Pensions.

Also, a bill (H. R. 4493) granting an increase of pension to Hester A. John; to the Committee on Invalid Pensions.

By Mr. SANDERS of New York: A bill (H. R. 4494) granting an increase of pension to Margaretta Pelton; to the Committee on Invalid Pensions.

Also, a bill (H. R. 4495) granting an increase of pension to Malinda J. Strayline; to the Committee on Invalid Pensions.

By Mr. THOMPSON: A bill (H. R. 4496) granting a pension to Ora Emma King; to the Committee on Invalid Pensions.

By Mr. UNDERWOOD: A bill (H. R. 4497) granting a pension to Mary C. Storer; to the Committee on Invalid Pensions.

Also, a bill (H. R. 4498) granting an increase of pension to Mary A. Shepherd; to the Committee on Invalid Pensions.

PETITIONS, ETC.

Under clause 1 of Rule XXII, petitions and papers were laid on the Clerk's desk and referred as follows:

713. By Mr. FULLER: Petition of sundry citizens of Newton and Springdale, Ark., favoring increase of pension to Civil War soldiers and their widows; to the Committee on Invalid Pensions.

714. By Mr. O'CONNELL of New York: Petition of the Bottlers Service Club, of New York, opposing an increased tariff on sugar; to the Committee on Ways and Means.

715. By Mr. ROWBOTTOM: Petition of Mrs. J. L. Crabb and others, of New Harmony, Ind., that legislation be enacted into law at this session of Congress for the relief of needy veterans of the Civil War and the aged widows of veterans; to the Committee on Invalid Pensions.

716. Also, petition of John E. Peckinpaugh and others, of Rockport, Ind., that Congress enact into law at this session legislation for the relief of the needy veterans of the Civil War and the aged widows of veterans; to the Committee on Invalid Pensions.

717. Also, petition of Laura E. Critchfield and others, of Gibson County, Ind., that Congress enact into law at this session of Congress legislation for the relief of needy Union veterans of the Civil War and the aged widows of veterans; to the Committee on Invalid Pensions.

718. Also, petition of Emma Stephenson and others, of Bloomington, Ind., that Congress enact into law legislation for the relief of needy Union veterans of the Civil War and the aged widows of veterans; to the Committee on Invalid Pensions.

719. Also, petition of Ethel Mason and others, of the State of Indiana, that Congress enact into law legislation for relief of needy Union veterans of the Civil War and the aged widows of veteraus; to the Committee on Invalid Pensions.

720. Also, petition of Iva Davis and others, of Winslow, Ind., that legislation be enacted into law at this session of Congress for the relief of needy veterans of the Civil War and the aged widows of veterans; to the Committee on Invalid Pensions.

SENATE

TUESDAY, *October 1, 1929*

(Legislative day of Monday, September 30, 1929)

The Senate reassembled at 11 o'clock a. m., on the expiration of the recess.

Mr. WAGNER obtained the floor.

Mr. JONES. Mr. President——

The PRESIDENT pro tempore. Does the Senator from New York yield to the Senator from Washington?

Mr. WAGNER. I yield.

Mr. JONES. I suggest the absence of a quorum.

The PRESIDENT pro tempore. The clerk will call the roll.

The legislative clerk called the roll, and the following Senators answered to their names:

Ashurst	Cutting	Greene	Kendrick
Barkley	Dale	Hale	Keyes
Bingham	Deneen	Harris	La Follette
Black	Dill	Harrison	McKellar
Blaine	Edge	Hastings	McMaster
Blease	Fess	Hawes	Metcalf
Borah	Fletcher	Hayden	Moses
Bratton	George	Hebert	Norris
Brock	Gillett	Heflin	Nye
Capper	Glass	Howell	Oddie
Caraway	Glenn	Johnson	Overman
Connally	Goff	Jones	Patterson
Couzens	Gould	Kean	Phipps

Pine	Simmons	Townsend	Walsh, Mass.
Pittman	Smoot	Trammell	Walsh, Mont.
Reed	Steiwer	Tydings	Warren
Robinson, Ind.	Stephens	Vandenberg	Waterman
Schall	Swanson	Wagner	Watson
Sheppard	Thomas, Idaho	Walcott	

Mr. FESS. My colleague [Mr. BURTON] is still detained from the Chamber on account of illness. I would like to have this announcement stand for the day.

Mr. McMASTER. I desire to announce that my colleague the senior Senator from South Dakota [Mr. NORBECK] is absent on account of illness. I ask that this announcement may stand for the day.

Mr. HALE. I wish to announce that the Senator from California [Mr. SHORTRIDGE], the Senator from Kansas [Mr. ALLEN], and the Senator from Arkansas [Mr. ROBINSON] are detained on business of the Senate.

Mr. CAPPER. I desire to announce that the following Senators are engaged in a hearing before the Committee on Agriculture and Forestry: Mr. McNARY, chairman; Mr. FRAZIER, Mr. HATFIELD, Mr. SMITH, Mr. RANSDELL, Mr. WHEELER, and Mr. THOMAS of Oklahoma.

Mr. SCHALL. I wish to announce that my colleague the senior Senator from Minnesota [Mr. SHIPSTEAD] is still detained from the Senate on account of illness. I ask that this announcement may stand for the day.

The PRESIDENT pro tempore. Seventy-five Senators have answered to their names. A quorum is present.

CRIME IN THE DISTRICT OF COLUMBIA

Mr. BLEASE. Mr. President——

The PRESIDENT pro tempore. Does the Senator from New York yield to the Senator from South Carolina?

Mr. WAGNER. I yield.

Mr. BLEASE. Mr. President, I submit two newspaper articles from this morning's Washington Post, and ask to have them printed in the RECORD in connection with some remarks made by me on September 23, page 3856, CONGRESSIONAL RECORD.

The PRESIDENT pro tempore. Without objection, it is so ordered.

The articles referred to are as follows:

[From the Washington Post, October 1, 1929]

SIX MEN INDICTED ON MURDER COUNTS—ALDRIDGE TO FACE TRIAL FOR MURDER OF POLICEMAN AFTER ROBBERY—THREE CHINESE ACCUSED

Seven persons were indicted on murder charges yesterday by the District of Columbia grand jury.

Alfred S. Aldridge, colored, was indicted for the murder of Policeman Harry J. McDonald.

Lee Din, alias Frank Lee; Lee Soon, alias Lee Suey, alias Lee Foo, alias James Lee; Lee Cuen Sing and Lee Foy were indicted for the murder of Lee King, a Chinese.

Zacheus White, colored, was indicted on a charge of murdering Edward Hall, also colored, last July 14 at a house on Twenty-fourth Street NE.

A second-degree murder indictment was returned against May E. Middleton, colored, in connection with the slaying of Joseph Middleton, who is said to have died from the effects of knife wounds.

CRITICISM IS ANSWERED

In returning the indictment in the King case the United States attorney's office answered criticism directed at it by Senator COLE BLEASE (Democrat), South Carolina, who charged that the case had been presented to the grand jury last July, but that no indictment had been returned. Rover, in a statement, declared that the grand jury had made a special report in the case and that the indictment would be returned as early as practicable.

The grand jury which considered the case went out of office yesterday, and the fact that the indictment was returned is probably due to the reason that if it had not been returned the new grand jury would have been forced to take up the case.

[From the Washington Post, October 1, 1929]

TEXT OF GRAND JURY'S REPORT IN McPHERSON INVESTIGATION

The text of the grand jury's report follows:

"Whereas the July grand jury has completed an investigation into the death of one Virginia McPherson and has submitted its findings to this honorable court; and

"Whereas such grand jury, in its investigation, has become convinced that certain matters in connection therewith should come to the attention of the court, the following resolutions were adopted by said jury on September 30, 1929: Be it

"Resolved, It is the sense of the grand jury for the District of Columbia for the July session, 1929, that the investigation into the conditions surrounding the death of one Virginia McPherson was handled in a most inefficient and unbusinesslike manner by those in charge, the detective bureau of the Metropolitan police department, in that:

"1. That the coroner's investigation into the death of Virginia McPherson was held merely as a matter of form and important witnesses who were summoned to said inquest were not given an opportunity to present their testimony.

"2. That following the coroner's inquest certain representations were made to the office of the United States attorney indicating that there might possibly have been a crime committed, thereupon a representative of said United States attorney's office visited the scene of death with those making the representations and is reported to have expressed as his opinion there might have been a crime committed; that the United States attorney's office acceding to the request of those making the representations, then ordered a police guard placed at the scene of the death to prevent the removal or disturbance of evidence on the scene; that said guard, without the knowledge of those interested in the case, was, with the permission and the direction of the United States attorney's office removed, and permission given by Lieutenant Kelly in charge of the homicide squad for the removal or destruction of certain evidence before it was possible to have completed a thorough investigation.

"3. That upon the opening of the investigation before the grand jury on Tuesday, September 24, 1929, several members of the United States attorney's office were present in the grand jury room in an attempt to make a stenographic report of the proceedings; and upon being asked the purpose for which the report was being made, the assistant United States attorney in charge advised the jury it was for use in possible perjury proceedings to be instituted against a certain witness and for use against said witness against the trial board of the Metropolitan police department; that it being the understanding of the grand jury that proceedings before it were of a strictly confidential and secret nature, and especially owing to the fact that the statement of said witness was being recorded without recording the questions propounded by the United States district attorney, objection to the procedure was made and the taking of stenographic notes discontinued.

"4. That in connection with this investigation there was presented to the jury such widely divergent testimony by members of the police department as to conditions at the scene of death of Virginia McPherson as to indicate to the jury there was a most cursory and inadequate investigation conducted at the time the body was found.

"5. That evidence which proved of vital importance to the jury in arriving at its verdict was not produced through the efforts of the detective bureau nor were the witnesses giving such evidence ever interviewed by investigators attached to said bureau, although such witnesses were readily available had an effort been made to interview them.

"6. As witnesses before said grand jury, Inspector William S. Shelby, in charge of the detective bureau, and Detective Lieut. Ed Kelly, in charge of the homicide squad, did under oath attempt to mislead the jury in regard to physical facts and their statements were subsequently disproved by other witnesses and by members of the jury themselves.

7. That from sworn testimony of witnesses in this hearing and from the attitude of other witnesses before it, the grand jury firmly believes that officials of the detective bureau indicated to such witnesses what they should testify and what they should forget.

"8. That Inspector Shelby on the witness stand raised his fist in rage and shouted, 'This grand jury should indict that man and that damnable woman for perjury,' indicating to the jury that the testimony of these two witnesses had been divulged to him.

"Resolved, That the grand jury request this honorable court to transmit to the major and superintendent of police and to the Commissioners of the District of Columbia its recommendation that Inspector Shelby and Lieutenant Kelly be relieved of all duty in connection with the detective bureau until their activities in this case have been investigated by the proper tribunal to determine what, if any, disciplinary action should be taken.

"Resolved, It is the recommendation of this body that in future hearings before the grand jury, witnesses, representatives of the press, and others be excluded from the anteroom adjacent to the grand jury room.

"Resolved, That this report be made to the Supreme Court of the District of Columbia and that a copy be placed in the minutes of the grand jury to become a part thereof as a permanent record.

"MERRITT O. CHANCE,
"Foreman of the Grand Jury."

Mr. BLEASE. It seems that North Carolina and South Carolina were forced to come to the rescue of the people of the District of Columbia to get any action from the district attorney's office and the grand jury of the District in regard to two very heinous crimes.

I have nothing to say, Mr. President, as to the guilt or innocence of any person connected with either case. I have practiced in the criminal courts too many years to condemn before a fair and impartial trial has been held, and I love too well the old doctrine of justice that "all men are presumed to be innocent until proven guilty"; but I do congratulate the very distinguished Senator from North Carolina [Mr. OVERMAN] for his part in the investigation of the McPherson case and on forcing the district attorney's office to take action.

Speaking for South Carolina, she is not through yet; and I am very proud that my remarks of the other day have brought results. Had the representatives of North and South Carolina not spoken, what would have been the result?

One newspaper article states:

The grand jury which considered the case went out of office yesterday, and the fact that the indictment was returned is probably due to the reason that if it had not been returned the new grand jury would have been forced to take up the case.

I presume, therefore, Mr. President, that if the old grand jury had been going to remain on duty there never would have been any action taken in the Lee case; but the district attorney's office, in view of the McPherson case, fearing what may be coming to them, thought they had best uncover the secret "special report" spoken of by District Attorney Rover. However, whatever may have been the cause, we are glad that we have forced them to show their hand in both these cases and hope that those higher up, including Mr. Hoover, will punish those who attempted to conceal evidence and their endeavors to shield crime.

PETITION—PROPOSED FEDERAL DEPARTMENT OF EDUCATION

Mr. CAPPER presented a petition of sundry citizens of Wichita, Kans., praying for the passage of legislation creating a Federal department of education, which was referred to the Committee on Education and Labor.

BILLS INTRODUCED

Bills were introduced, read the first time, and, by unanimous consent, the second time, and referred as follows:

Mr. SWANSON. I introduce a bill for the improvement of Government-owned land at Wakefield, the birthplace of George Washington, and I ask that it may be referred to the Committee on the Library.

The PRESIDENT pro tempore. The bill will be received and referred.

By Mr. SWANSON:

A bill (S. 1784) appropriating money for improvements upon the Government-owned land at Wakefield, Westmoreland County, Va., the birthplace of George Washington; to the Committee on the Library.

By Mr. WHEELER:

A bill (S. 1785) providing for the construction of roads on the Blackfeet Indian Reservation in the State of Montana; to the Committee on Indian Affairs.

By Mr. DALE:

A bill (S. 1786) granting a pension to Lydia L. Gardner (with accompanying papers);

A bill (S. 1787) granting a pension to Francis Landry; and

A bill (S. 1788) granting an increase of pension to Emma G. Christie (with accompanying papers); to the Committee on Pensions.

By Mr. CAPPER:

A bill (S. 1789) granting an increase of pension to Sarah Brewer (with accompanying papers); to the Committee on Pensions.

A bill (S. 1790) for the relief of John Hamilton (with accompanying papers); to the Committee on Military Affairs.

By Mr. SHORTRIDGE:

A bill (S. 1791) to authorize the presentation to Charles H. Mann of a distinguished-service medal; to the Committee on Military Affairs.

A bill (S. 1792) to provide for the appointment of an additional district judge for the southern district of California; to the Committee on the Judiciary.

BURIAL IN EUROPE OF WORLD WAR SOLDIERS FROM NORTH CAROLINA

[Mr. SIMMONS asked and obtained leave to have printed in the RECORD a list prepared by the Quartermaster General of soldiers of the World War from North Carolina who are buried in cemeteries in Europe, which was printed in the RECORD of April 19, 1929, page 186.]

REVISION OF THE TARIFF

The Senate, as in Committee of the Whole, resumed the consideration of the bill (H. R. 2667) to provide revenue, to regulate commerce with foreign countries, to encourage the industries of the United States, to protect American labor, and for other purposes.

Mr. WALSH of Massachusetts. Mr. President, with the permission of the Senator from New York [Mr. WAGNER], I ask to have printed in the CONGRESSIONAL RECORD a brief statement recently issued by the United States Sugar Association entitled "The Flexible Tariff and the Cost of Sugar." The statement alleges that the failure of the President to reduce the duty on sugar as recommended to him in 1924 by the United States Tariff Commission under the flexible provision of the tariff law, has cost the consumers of the country approximately $75,000,000 a year.

The PRESIDENT pro tempore. Without objection, it is so ordered.

The statement referred to is as follows:

THE UNITED STATES SUGAR ASSOCIATION,
1372 National Press Building.

THE FLEXIBLE TARIFF AND THE COST OF SUGAR

The nonapplication of the flexible provision, when in 1924 the United States Tariff Commission recommended to President Coolidge a reduction of the duty on Cuban sugar from 1.76 cents per pound to 1.23 cents per pound, has cost the consumers of the country approximately $75,000,000 a year, according to the commission's own statistics.

High hopes were entertained, back in 1922, that the so-called flexible provision of the Fordney Tariff Act would bring to pass an era of scientific tariff making. It was hailed by friend as an epochal step forward, and accepted by foe with some reservations.

It is of record that the most notable case arising under this provision concerned the effort to procure a reduction in the tariff on sugar. This case was watched with unabated interest from its inception and earned a reputation as a "national scandal."

The United States Tariff Commission spent 2½ years on its investigation. It was a searching inquiry; every part of the industry obtained a hearing; every fact was run to its lair. When completed the Tariff Commission recommended that a rate of 1.23 cents would give the domestic producers every measure of protection, and recommended to the President that he reduce the rate from 1.76 cents to 1.23 cents per pound. A minority report recommended a rate of 1.50 cents. These figures were sustained by the Bureau of Economics, whose report states that a rate between 1.25 cents and 1.50 cents per pound would be a just rate.

Unfortunately this recommendation of the Tariff Commission came during a political campaign, and the President, it is said, thought it inexpedient to adopt it and put it in effect.

The Tariff Commission stated in its report that "the cost to the country of retaining the rate of 1.76 cents per pound as against the establishment of a rate of 1.23 cents per pound is approximately $75,000,000."

Now tariff experts have demonstrated that the rate on sugar in the Hawley bill will increase the burden on the American pocketbook some $150,000,000 per annum.

Mr. ODDIE. Mr. President——

The PRESIDENT pro tempore. Does the Senator from New York yield to the Senator from Nevada?

Mr. ODDIE. Will the Senator from New York yield for a moment, in order that I may have a letter read and placed in the RECORD?

Mr. WAGNER. I yield for that purpose.

Mr. ODDIE. Mr. President, I ask that the letter which I send to the desk, from the Growers Tariff League of San Francisco, Calif., together with the names of the officers and directors and their business occupations, be read.

The PRESIDENT pro tempore. Without objection, the clerk will read, as requested.

The Chief Clerk proceeded to read as follows:

(By air mail)

GROWERS TARIFF LEAGUE,
512 Sacramento Street, San Francisco, September 26, 1929.

T. C. Tucker, chairman; B. S. Allen, secretary. Directors: J. E. Bergtholdt, secretary-manager The Silva-Bergtholdt Co., Newcastle; C. D. Cavallaro, president California Prune & Apricot Growers Association, San Jose; Roy Hagen, secretary-manager California Cattlemen's Association, San Francisco; C. D. Hamilton, president California Almond Growers Exchange, Banning; Fred J. Hart, managing editor Farm Bureau Monthly—Radio KQW, San Jose; John Lawler, general manager Poultry Producers of Central California, San Francisco; John E. Pickett, editor Pacific Rural Press, San Francisco; Miles Standish, pear grower, San Francisco; Frank Swett, president-manager California Pear Growers Association, San Francisco; W. P. Wing, secretary-manager California Wool Growers Association, San Francisco; T. C. Tucker, chairman, San Francisco.

Mr. ODDIE. Mr. President, my attention has just been called to the fact that the Senator from Pennsylvania [Mr. REED] on yesterday placed a similar letter in the RECORD, but I will ask that this letter be printed in the RECORD to-day.

The PRESIDENT pro tempore. Without objection, it is so ordered.

The letter is as follows:

Hon. TASKER ODDIE,
Senate Office Building, Washington, D. C.

DEAR SENATOR ODDIE: The Growers Tariff League has watched with keen interest and some anxiety the progress of the administrative fea-

ture of the tariff bill as it has finally emerged on the floor of the Senate.

From the very start the league has felt that the flexible clause of the new tariff bill passed by the House, and as recommended by the Senate Finance Committee, is of tremendous importance to agriculture. The league consistently and constantly has preached the doctrine to its members and the various marketing commodity groups with which it enjoys close association that agriculture wants only a tariff enabling it to compete on a basis of equality in the American market. Since this is, in our opinion, a sound doctrine, and one which we can maintain to the welfare of our members and in fairness to the consumers, we are very much interested in the flexible clause.

We believe on the foundation erected by the Congress and acting under the regulations which the House and Senate will stipulate for the use of the flexible clause, a tariff structure can be erected which will be sound economically and efficient in operation. We say this with a clear appreciation of the fact that we must be just as ready to accept a reduction as to stand for an increase in rates when justified by the facts, because it must work both ways. We are quite ready to take this risk because of our belief that a prohibitive tariff out of line with economic conditions tends to become a burden on the consumer, and consequently is a threat to all legitimate rates because of the discontent aroused.

Also we do not believe that artificial support beyond equality reacts to the benefit of any industry. With our superior products and thoroughly American methods of sanitation, packaging, and sales we are quite sure that we can take care of ourselves in the American market if we are given that difference in the tariff between the cost of production here and the low cost of the competing import.

For these reasons we respectfully urge you to use your influence and to vote to preserve the flexible clause of the pending tariff bill.

Assuring you of our appreciation of your efforts in behalf of agriculture, and with best wishes, I am,

Very truly yours,

BEN S. ALLEN, *Secretary.*

Mr. WAGNER. Mr. President, I rise to discuss, for not too long a time, I hope, the so-called flexible provisions of the pending tariff bill.

The first subdivision of the committee amendment as modified by the Senator from Utah [Mr. SMOOT] authorizes the President to change the classification of any product and to increase or decrease the rate of duty of any commodity not on the free list. The second subdivision authorizes the President to change the basis of valuation. Such a delegation of lawmaking powers to an Executive is, to my mind, unconstitutional, in that it violates the very first section of the first article of the Constitution, which vests in Congress, and solely in Congress, all legislative power. The laying of duties is a legislative power and is so specifically defined in section 8, Article I, of the Constitution.

I address myself first to this argument, because in the discussions which have preceded mine, and in the presidential announcement, it seems to have been taken for granted that the constitutionality of these provisions is no longer open to challenge. That I deny.

After full deliberation and the closest study of the Hampton case (J. W. Hampton & Co. *v.* U. S., 276 U. S. 394), I am ready to assert with confidence that the flexible tariff provision does not meet the primary requirement of constitutionality.

The Hampton case, in which the Supreme Court sustained the flexible provisions of the tariff act of 1922, was, like every other controversy before that tribunal, decided on the basis of the facts before the court. It is not at all an uncommon event for a court to come to a contrary decision with respect to constitutionality when a different set of facts is brought to its attention.

Right here I summon as my witness on the point I am attempting to make a case—the State of New York *v.* Charles Schweinler Press (214 N. Y. 395)—within the State of New York. About 30 years ago the Legislature of New York passed an act prohibiting women from working in factories during certain hours of the night. The constitutionality of that law was challenged; it went to the highest court of the State, and was there held to be unconstitutional as interfering with women's right to contract and interfering with their liberty as guaranteed in the Constitution of the United States. About 15 years thereafter a commission was appointed to investigate factory conditions in the State of New York. I had the very high honor of being chairman of that commission.

As a result of its investigation the unwholesome and insanitary conditions under which women were compelled to work in factories at night and the effect such employment had upon the health of women were brought clearly to public attention through the testimony adduced before the commission. Thereafter I introduced a bill in the legislature providing a prohibition against women working in factories during certain hours of the night.

In the preamble to the measure it was stated that the legislation was proposed to be enacted in order to preserve the health of the women of the State. The law was enacted; it was challenged as being unconstitutional, and the old Williams case was cited as an absolute precedent. The lower courts, of course, followed the prior ruling and held the law unconstitutional. It went to the State court of appeals, and I there had the privilege of appearing as counsel to defend the constitutionality of the act, of course without compensation. The court of appeals reversed its former position, held the act to be constitutional, and based its decision upon the ground that there had been submitted to the court new facts which during the consideration of the former act were not before the court, namely, that what the legislature had in mind in passing the act was to preserve the health of the womanhood of the State, which was a matter, of course, of State concern. The court of appeals held that the legislature had acted properly within its power, under the police power of the State, reversed its former attitude upon new facts, and held the law to be constitutional. In its decision, among other things, the court said:

> There is no reason why we should be reluctant to give effect to new and additional knowledge upon such a subject as this even if it did lead us to take a different view of such a vastly important question * * *.

New facts call for new decisions, and the Supreme Court of the United States has recognized that principle. In the case of Muller against Oregon, reported in Two hundred and eighth United States Reports, page 404, the Supreme Court said:

> * * * When a question of fact is debated and debatable, and the extent to which a special constitutional limitation goes is affected by the truth in respect to that fact, a widespread and long-continued belief concerning it is worthy of consideration.

We must be entirely clear as to the determining principle which the court pronounced in the Hampton case. The flexible provision of the 1922 tariff act was in that case approved because the court found:

> What the President was required to do was merely to execute the act of Congress. It was not the making of law. He was the mere agent of the lawmaking department to ascertain and declare the event upon which its expressed will was to take effect.

The event upon which presidential action could be invoked was the discovery that differences in the cost of production of the domestic and imported competitive article were not equalized under the existing law. Congress had implicitly stated that such differences could be accurately computed and that they could be made the measure of an administrative adjustment of rates. The Supreme Court assumed these facts because Congress had asserted them. Now, however, we know that the alleged facts are not reliable guides. We now realize that though the difference in cost of production is theoretically a fact, it can not be converted into tariff rates without the exercise of a vast and unlimited discretion. There is now available the record of seven years' operation, which convinces beyond a doubt that rates can not sensibly, can not possibly be administratively measured by sole adherence to a mechanical standard erected by Congress.

In the reports of the commission we find a constantly recurring division of opinion. Repeatedly certain members of the commission select facts which lead to a higher rate of duty than the facts selected by certain other members of the commission. Can we draw any other conclusion than that the true differences which divide the members of that body or which will divide any group of men who may constitute the commission are matters of policy, are views respecting high or low tariff, and that facts are selected and data assembled which support such conclusions?

I ask unanimous consent to have inserted at this point a list of cases in which the commission has been divided on significant points.

The PRESIDENT pro tempore. Without objection, it is so ordered.

The list is as follows:

NUMBER OF CASES ON WHICH THE COMMISSION HAS BEEN DIVIDED ON SIGNIFICANT POINTS

[Does not include the reports sent to the President on which no action has been taken]

1. Wheat.
2. Sugar.
3. Cotton warp knit fabric.
4. Gold leaf.
6. Taximeters.
7. Print rollers.
8. Butter.
9. Iron in pigs.

10. Swiss cheese.
11. Rag rugs.
12. Cherries.
13. Cast polished plate glass.
14. Potassium permanganate.
15. Milk and cream.
16. Flaxseed.
17. Cotton hosiery.
18. Logs of fir, etc.
19. Granite.
20. Linseed oil.
21. Straw hats.

Mr. WAGNER. Mr. President, invariably the differences which destroyed the unanimity of the commission have expressed themselves in a controversy over some question of fact. Which is the chief competing country? Where is the principal market? Are the two selected commodities comparable? Is the information collected representative of the industry? These were but the means of expressing in legally conformable language the desire to increase or decrease a particular duty. A reading of the reports submitted by the commission compels the conclusion that the determination of every duty proceeds, and necessarily so, from a determination of policy, a determination which has in all the history of representative government been called legislation.

The President has written only two opinions to my knowledge, which reveal the manner of the presidential mind in coming to a conclusion under the flexible provisions of the tariff. The more interesting of the two is the opinion on sugar. Three members of the commission had recommended to the President a decrease in duty. Two had dissented from that view. One had not participated. Under the law the President was required to make a decision governed by the differences in the cost of production. That was the statutory guide for his supposedly administrative act. How different are the considerations which prompted the President in his action when he refused to reduce the tariff as recommended by the majority of the commission! In his opinion he reveals that he took the following matters into consideration:

That the farmer is entitled to share with the manufacturer benefits under the protective-tariff system.

The need for the revenue arising out of the sugar tariff.

That it is desirable that sugar beet be grown as a substitute for wheat in order to reduce wheat acreage; and also that sugar beet is a desirable diversifier of crops.

The desirability of becoming independent of foreign sources for an article of food supply.

The danger of foreign combinations to manipulate prices.

Concerning costs of production, he said that a wide variety of conclusions could be obtained by alternative methods of interpretation of the same basic data. That, of course, is true of every single instance that has come before the commission. Therein is concealed that universal weapon which permits the President to decide as he will on each and every tariff schedule.

Let there be no mistake about the point I am trying to emphasize. I do not find fault with the President for taking these matters into consideration. It is not even my purpose at this time to rehearse the shameful story of the sugar investigation. All I am driving at is that we must at once realize that if this is a sample of an administrative decision then we may as well lock up the Halls of Congress. If this be a determination or a finding of the existence of a fact upon which the law of Congress takes effect then there is no longer any distinction between lawmaking and administration.

Of course, the state of the revenue must be considered, but that has ever been a congressional function. Of course, the farmer should be given the benefit of tariff legislation, but it has always been the province of Congress to determine when and how. Whether or not we must become self-sufficient in a particular commodity is, of course, a pertinent question in tariff making, but since when has that become a question of administration?

In the sugar report we have an excellent exhibit of flexible tariff in operation. We can see the considerations which enter in making a decision. I quite fully agree that those objects must be taken into consideration in writing an equitable tariff bill, but I also insist that the weighing and measuring of the precise effect to be given to such matters are in the domain of the legislature.

Congress, and only Congress, can decide whether duties shall be so levied as to encourage and expand beet sugar—that is legislation, not administration.

Congress, and only Congress, has, by the Constitution, been given plenary authority to determine the extent of the Federal revenue and whether or not it shall be derived from the sugar consumer—that is legislation, not administration.

The court has said that the test laid down by statute was perfectly clear and intelligible. As a matter of abstract logic that is no doubt true. Now, however, we are in possession of an actual record of events, an actual experience which shows that though the test laid down by Congress may have been perfectly clear for purposes of investigation, it could not be translated into new rates of duty without the exercise of such discretion and the consideration of such matters of national policy that in all truth and in all honesty we must call it legislation.

There is one other thought on the question of constitutionality which is pertinent.

The Supreme Court is not the only guardian of the Constitution. Each one of us is under a coequal duty with the members of the bench to defend and maintain that Constitution and to vote only in favor of legislation that conforms with the requirements of that instrument. There are innumerable situations where Congress is the last resort in the determination of constitutionality, where from its decision there is no appeal to any court.

The standard of constitutionality which each one of us must apply is somewhat different from the standard which the Supreme Court employs in passing on legislation. When the constitutionality of a bill is contested in the courts every doubt is resolved in favor of constitutionality. Every fact which was assumed by Congress to be a fact is not disputed by the court unless the assumption flies violently in the face of reason.

When we in this body pass upon a bill we can not give ourselves the benefits of those doubts. We ought not knowingly to write into the bill assumptions of fact which we know are not true. We ought not to take advantage of the Supreme Court's procedure by framing legislation which in form only is constitutional but which in substance is in deadly conflict with the requirements of our organic law.

Mr. President, one of the most disquieting facts about this controversy is the frequency with which the advocates of this transfer of legislative power to the Executive have pointed to precedents. Precedents do not make a thing right. They may only prove that we have been wrong before. At the present time we are on the crest of the wave of presidential encroachments upon legislative territory. What at first seemed like a harmless delegation of an inconsequential power has, through accretion and addition, so multiplied the power and authority of one individual of this Government that the system of a functional balance among the three great divisions of government is well nigh upset.

The time is ripe to reject the question, Have we done it before? and, instead, to inquire, Have we not gone far enough, indeed too far, in the direction of centralization? This year the campaign of those who are impatient with the methods of our representative democracy had planned to write into the law "competitive conditions" as the standard of comparisons which was to guide the President in writing his tariff laws. That campaign was successful in the House. It was for a time successful in the Finance Committee. Let us hope that it will not be successful in this body.

The next campaign has already been planned. An attempt will soon be made to remove the 50 per cent limitation which now somewhat curbs the lawmaker in the White House. His authority is further to be extended to transfer commodities from the free list to the dutiable list and from the dutiable list to the free list.

Mr. President, where does all this lead? Why enact any tariff rates at all? Why not leave the whole matter in the hands of the President? Why not extend this congressional labor-saving device to other branches of legislation? Let us enact a general income-tax law stating that the ability of the citizen to pay shall measure his tax liability. The President can then proceed to fix the details of rates and exemptions. If the flexible tariff is constitutional so is the flexible income tax. If the one is sound policy, so is the other. If the American people will tolerate the first they will tolerate any and every invasion by the Executive into the sphere reserved by the fathers of the Constitution for the representatives of the people of the United States. I need hardly say that I make no personal references whatever when I speak of "the President." It is the office alone that I intend.

We are about to vote on schedules embraced in 1,559 paragraphs. If this provision remains in the bill every vote recorded is largely meaningless. Weeks may be consumed in debate whether pig iron shall be dutiable at $1.50 a ton. We may finally so decide and write it into law. Actually it may mean that the duty will be anywhere from 75 cents to $2.25, as the President may decide.

For a century and a half the order of legislation has been deemed settled in the manner provided by the Constitution. Is all this to be changed with respect to tariff legislation? The President may be of the opinion that one rate or all rates in the bill are too high or too low, but he need not indicate that fact to the Congress. He is under no obligation to act promptly within the constitutional period of 10 days. He may give the bill his formal approval, preserving in his own mind

his objections and his intentions. Thereafter, at such time as may suit his convenience, the President is at liberty to veto any and all of the provisions of the bill. Congress does not secure the opportunity to repass it over his veto. The President himself not only strikes from the law the measure written by Congress, but writes the new law which is to take its place, to be enforced by the executive department, and to be given validity by every court in the Nation.

Where are the checks? Where are the balances that the separation of powers was intended to provide for our Government? There must be no mistake about this: There are neither checks nor balances, there is no separation of powers where a single individual can determine that he does not like a provision of law, strike it out, write a new one in its place, enforce the new law, and continue beyond the reach of the legislature or the courts. No amount of befuddlement can obscure the fact that that is exactly what the flexible provision of the tariff accomplishes.

Consider, Mr. President, the extent of the power which by this provision is handed to one person. Consider the vastness of the discretion which it vests in him, and compare it with the loudly trumpeted declaration that he is but carrying out the law as laid down by Congress.

By this provision there is vested in the President the discretion to determine which industry is to be investigated and which is to be overlooked; to determine how to investigate; to conduct the investigation; to determine the facts; to determine the law; to determine the nature of the necessary remedy; to lay the duty and collect it; to remain in every case the final arbiter, beyond the reach of review for action or nonaction.

Many a protective-tariff duty establishes for a commodity a geographical boundary in the United States beyond which the imported article can not go. Under this provision who determines where that line shall be drawn? The President.

In every investigation it has been found that there were high-cost producers, inefficient producers, producers who used antiquated methods, producers who continued to function within limited areas only because of the protection of the freight rate as against their competitors. Who determines whether in the comparisons of costs between the domestic and the imported article these high-cost producers shall be included or excluded, and thus inefficiency perpetuated or discouraged? Who decides on this policy of national economy? The President.

There have been in every tariff act commodities from which Congress deliberately withheld the full measure of duty based on relative cost differences for the benefit of the consumers. Under the flexible provision the President may impose the duty which had been deliberately withheld by Congress and flout the will of the legislature.

Let us not forget that this incomparable power to enrich or impoverish, to build an industry or cut it down, to remake the economic geography of our country—all this power is placed in the hands of a man who is not only President but the head of a political party.

Does he use it with an eye to what is politically discreet? In the table of presidential proclamations which appears in the CONGRESSIONAL RECORD I notice that the 14th day of May, 1929, was a particularly busy one. The House tariff bill had just been brought in and words of protest were heard from widely scattered sections of the country. In the Senate the debenture debate was ruffling many tempers. That afternoon there appeared a brief presidential announcement which proclaimed an increase of tariff on flaxseed, on milk and cream, and on plate glass. I offer no criticism of these increases, but I call attention to the interesting geographical allotment—flaxseed for the Northwest, milk and cream for the Northeast, and, of course, the good State of Pennsylvania was not forgotten. It may be that all this was pure coincidence. Yet it is true that the distribution of this soothing sirup was peculiarly well timed. It is hard to believe that there was not a hurried search in Tariff Commission pigeonholes to find the appropriately mollifying reports to suit the political exigencies of the day. There was a prophetic note in the headline which appeared in the New York Times on the morning of May 14, 1929. It read, "Party wrangles in Senate curbed by Hoover tactics."

Mr. President, we are about to vote on the flexible-tariff provision, and it is appropriate that the precise limits of the issue between the President and the opponents of the Executive tariff should be clearly defined.

After the Tariff Commission has made an investigation and recommended a change in duty who is to enact that recommendation into law? The President takes the position that he alone is competent to act with the necessary dispatch to afford adequate relief. It is my view that if a new duty is to become effective, if a greater tax burden is to be imposed upon the people of the United States, the change must secure both congressional and presidential approval as in the case of the enactment of every other law. The issue is not between a flexible and an inflexible tariff; the true line of division is between an executive tariff and a congressional tariff.

What is the nature of the power which the President demands shall be his? It has been eloquently described by the distinguished Senator from Idaho as the remorseless power of taxation. It is that, Mr. President, but it is also more than that. In the exercise of the ordinary power of taxation we take from the citizen a portion of his wealth for the use of the Government. By the tariff the Government not only takes from all citizens but by the selfsame act bestows what it has taken upon a few of them. Our ordinary tax laws are general in terms. They apply to all persons, to all corporations, to all industries alike. The tariff can be made to operate for or against a single State, for or against a single industry, for the weal or woe of a single individual. Who will dare give offense to a President possessed of a power which can be so accurately aimed at the object of displeasure? Who will fail to curry favor with an individual who has it in his power to confer the riches of Monte Cristo upon his favorites?

President Butler, of Columbia University, in a brilliant address recently pointed out how in the past generation the center of gravity of human interest has been shifting—

> from politics to economics; from considerations that had to do with forms of government, with the establishment and protection of individual liberty, to considerations that have to do with the production, distribution, and consumption of wealth.

So it has been in the history of executive authority. The despot of four centuries ago had the life and liberty of a subject in his private keeping. The great struggle against the tyrannies of that day were directed against the insecurity of life and the deprivation of liberty. The Bastille was one of the last remaining symbols of that ancient order and the French revolutionists destroyed it.

In our Constitution we erected a legal wall of protection around life and liberty and placed them beyond the reach of the Executive and deposited them instead, through the jury, into the safe keeping of the people themselves.

That chapter is largely finished. The new struggle, the new resistance, is against the concentration of economic power in the hands of executive authority. Heretofore we have made generous grants of economic power—by that I mean wealth-making and wealth-denying power—to the President or his agencies. We conferred it in the merchant marine act. We bestowed it upon him through the Federal Farm Board act. None of these, however, measures up in rank, in significance, in its all-pervasiveness to the authority which is written into the words of section 336 of this bill.

The new danger line in twentieth century government is drawn across the economic field. Are we going to hold that line or are we going to renounce the victory of a thousand years of fighting to break up the concentration of political power, and permit the concentration of economic power in the custody of a single individual?

No Member of this body who has regard for the judgment of posterity can fail to make a correct decision or afford to make a wrong one.

Mr. President, there are two major evils attendant upon the present system of tariff making. One is the lack of information, the other logrolling. The proponents of the Executive tariff seem to argue in this vein. Congress is uninformed of the facts necessary to make a tariff. Congress plays politics with the tariff. Therefore, they say, we can solve the tariff problems by eliminating Congress from the tariff-making process. Such reasoning may be persuasive in some quarters. It does not appeal to me. To my way of thinking the solution lies not in the elimination of Congress but in the elimination of the ignorance and the politics.

We were well on the way to accomplish the first when, in 1916, we succeeded in organizing a tariff board as a fact-finding agency. It marked the first successful attempt to organize the data and information which ought to be available to the Congress in drafting the tariff. That hopeful experiment suspended in 1922 should be reinstated, continued, and strengthened. The commission should again be assigned to the task of investigation. If it is kept free of officious interference, if its judicial privacy is respected, if it is properly staffed, it is bound to do more for the true cause of protection, and more to safeguard the interests of the consumers than any single improvement in our tariff system that has yet been devised. But I plead, Mr. President, let us not destroy its usefulness and effectiveness by imposing upon it the morale-breaking responsibility of the Executive tariff.

The other tariff evil is the congressional give-and-take of votes, the bartering and swapping of duties and schedules, the continuous surrender of principle to expediency; in short, the logrolling which has earned for tariff legislation the disgraceful reputation it enjoys. In part, logrolling thrives on ignorance and darkness. When light is substituted the vice is bound to be less virulent.

I confess, however, that information alone will not wipe it out. Logrolling will cease only when enough men in public life who enjoy the confidence of the people condemn it as a reprehensible practice, subversive of free government and arouse the moral and political conscience of the electorate to refuse high legislative honor to men who will engage in this venality.

Let us restore Congress to its rightful place in the making of tariffs. Let us provide it with a commission that will secure for its use pitiless information, yes, pitiless information, with respect to every commodity, and thereby rid the country of the logrolling and the petty politics which are now predominant influences in writing the schedules.

Mr. President, underneath the political division of this body symbolized by that center aisle, underneath the sectional differences and the diversity of economic theory, there is a solid substructure of ideas and ideals which we hold in common, which we cherish, which unite us by a common devotion. It is that substructure which this provision is ravaging, and we ought not to hesitate to unite in opposition to a law which has that effect.

Mr. REED obtained the floor.

Mr. EDGE. I suggest the absence of a quorum.

The PRESIDENT pro tempore. The clerk will call the roll.

The legislative clerk called the roll, and the following Senators answered to their names:

Allen	Fess	Jones	Schall
Ashurst	Fletcher	Kean	Sheppard
Barkley	George	Kendrick	Simmons
Bingham	Gillett	Keyes	Smoot
Black	Glass	La Follette	Steiwer
Blaine	Glenn	McKellar	Stephens
Blease	Goff	McMaster	Swanson
Borah	Gould	Metcalf	Thomas, Idaho
Bratton	Greene	Moses	Townsend
Brock	Hale	Norris	Trammell
Capper	Harris	Nye	Tydings
Caraway	Harrison	Oddie	Vandenberg
Connally	Hastings	Overman	Wagner
Couzens	Hawes	Patterson	Walcott
Cutting	Hayden	Phipps	Walsh, Mass.
Dale	Hebert	Pine	Walsh, Mont.
Deneen	Heflin	Pittman	Warren
Dill	Howell	Reed	Waterman
Edge	Johnson	Robinson, Ind.	Watson

The PRESIDENT pro tempore. Seventy-six Senators having answered to their names, a quorum is present.

Mr. REED. Mr. President, I believe that the little I have to say will be easier listened to if I decline to yield in the course of the remarks I am about to make. Having concluded them I shall be very glad to yield for questions from any Member of the Senate.

I want first to invite the attention of the Senate to some aspects of the argument on the question of the constitutionality of the flexible tariff. Of course, we all know that the Supreme Court, by a unanimous opinion in the case of Hampton *v.* The United States (276 U. S. 394) has held that the flexible-tariff provisions of the act of 1922 are constitutional. Ordinarily we would be content to abide by that decision and it would not be questioned by Congress again.

However, over and over again in the debate that decision has been criticized. I was amazed to hear it stated by the distinguished Senator who preceded me [Mr. WAGNER] that he believes that were the constitutionality of the flexible tariff again submitted to the Supreme Court it is probable that the decision would be different. It is almost incredible to me that a statute couched in the same words as that which was passed upon by the Supreme Court only 15 months ago and which was then upheld by the unanimous decision of the Supreme Court could be expected to be treated differently by a court composed of the same justices acting on exactly the same question as was then presented.

We have heard much about the delegation of power to the President which is made by this section of the flexible tariff. It has been denounced over and over again as a departure from the settled principles that define the limitation between executive and legislative power. We have been told that the flexible tariff marks a surrender of power by the Congress to the President which is unprecedented. For example, my friend the distinguished Senator from Idaho [Mr. BORAH] said the other day in discussing it:

> There has never been an instance in which the Congress of the United States has undertaken to delegate any such power prior to the time when these delegations were proposed. They are without parallel or precedent in our history.

I think, Mr. President, that it will be highly illuminating to all of us to analyze that statement and see how far they are without precedent or parallel in our history. I venture to state without challenge that the Congress has passed at least 15 tariff acts which contain far greater delegations of power to the President than does the flexible-tariff provision which is now being criticized. It is not necessary to go back to King John and the barons at Runnymede to find out whether this delegation of power is such a devastating thing. We need only look to our own history, to look to the bills which have been passed since 1794, to see how far we have gone in delegating just such power as this to the American Presidents.

In the act of June 4, 1794, when Washington was President, when in the Senate of the United States sat several of the men who had signed the Constitution, when many of the Justices then upon our Supreme Court were men who had participated in the making of the Constitution, when the President, George Washington himself, certainly knew what was intended in the way of limitation of the powers of the Executive, it was then provided that the President might, if he thought the public safety required it, put an embargo upon all foreign shipping in the ports of the United States.

And beginning then and running down through the nonimportation act of 1806 and the many tariff bills from Washington to Hoover, through Democratic and Republican administrations alike, similar power has been conferred upon the President. Never was it more widely exercised and more generously employed than by that great Democrat, Thomas Jefferson.

The powers that are conferred upon the President by section 338 of the bill now before us, which are copied almost exactly from section 317 of the act of 1922, go very much further in the way of the delegation of legislative power than does section 336 of the present bill or section 315, its predecessor in the act of 1922. Let me call the attention of the Senate to the delegation of power that is made by section 338. It is that which is intended to furnish retaliation against discrimination by foreign countries against our commerce. It will be found there provided that the President, when he finds that the public interest will be served thereby, "shall by proclamation specify or declare new and additional duties."

Mark that! He may take an article from the free list and may make it dutiable. He may add to duties already imposed by Congress on articles wholly or in part the growth or product of any foreign country, whenever he finds that that country imposes an unreasonable charge or exaction or regulation or limitation on our commerce which is not imposed upon the commerce of every other foreign country. He may also use it when he finds that the foreign country discriminates in fact against our foreign commerce. That is to say, should France give Germany or Belgium something in the way of a particular trade favor, then the President, without any review by any court, without any control by any other body, may take from the free list any article he sees fit or any number of articles and may impose a duty upon them by proclamation, or he may take any article on the dutiable list and add additional duties to the duties specified by Congress. No rule is stated to specify the amount that he shall add or the amount of the new duty that he shall put on, save only the limitation further on in the section that the duties imposed shall not exceed 50 per cent ad valorem. Then should the President in his uncontrolled discretion find that the duties which he has put on are insufficient to compel a removal of the discrimination he may, in his discretion, go further and put on an absolute embargo against goods from that foreign country.

Mr. President, we have had a lot of criticism of the flexible-tariff provision. We have had criticism of it, although it sets down a definite rule and a definite limitation, although it binds the President to put on no more than the difference in the cost of production at home and abroad, shown after a careful investigation by a commission. All the time that our critics have waxed eloquent in denouncing that provision of the flexible tariff, hedged about as it is with all these safeguards, they have accepted in silence, both in 1922 and 1929, the other section that goes so much further. It has been accepted in silence, as I say, in over 15 tariff bills during the past 140 years.

The power which the opponents of the flexible-tariff provision are now denouncing as unprecedented was exercised by Thomas Jefferson when he was President far more arbitrarily than the President may exercise it under section 336. There is nothing unprecedented in this; there is nothing to strain at in this gnat at which opponents of the legislation are straining while they swallow the camel that is in section 338. Not one voice was raised against that section in the House of Repre-

sentatives; not a voice has been raised against it here; not a voice was raised against it in either end of the Capitol in 1922.

It is said that there is no precedent for this proposed legislation. It should be borne in mind that the action which the President may take under the flexible tariff is taken only after an investigation by a Tariff Commission which we have done our utmost to keep impartial and judicial in its nature; which we have done our utmost to keep nonpartisan or bipartisan, if Senators please, with party representation upon it equally balanced. The President's action, based upon such a report, is limited to a statement of the difference in the cost of production and the expression of that difference in terms of tariff. He is clearly bound by a definite rule of action, quite unlike those embargo acts, those retaliatory provisions that have been accepted ever since the Government began.

As to the constitutionality of those acts, we find our answer in the case of Field *v.* Clark (143 U. S. 649), the case referred to in the Hampton case, to which attention was called the other day in this discussion, where the right of the President to put on retaliatory duties was sustained by the Supreme Court of the United States. The statute under discussion in Field against Clark was an act of 1890, and it provided that with a view to securing reciprocal trade advantages, wherever the President found that any unreasonable exactions were being put on agricultural or other exports of the United States he might take sugar or molasses or coffee or tea or hides and clap a duty on them in his discretion. The statute provided that—

> So often as the President shall be satisfied that the government of any country producing and exporting sugar, molasses, coffee, tea, and hides, raw and uncured, or any of such articles, imposes duties or other exactions upon the agricultural or other products of the United States, which in view of the free introduction of such sugar, molasses, coffee, tea, and hides into the United States he may deem to be reciprocally unequal and unreasonable, he shall have the power and it shall be his duty to suspend, by proclamation to that effect, the provisions of this act relating to the free introduction of such sugar, molasses, coffee, tea, and hides, the production of such country, for such time as he shall deem just, and in such case and during such suspension, duties shall be levied, collected, and paid upon sugar, molasses, coffee, tea, and hides, the product of or exported from such designated country as follows:

And then the duty is stated. In other words, in Field against Clark the Supreme Court of the United States held that if the President shall feel that any exports from the United States, be they agricultural or industrial, no matter what their nature, are unreasonably treated by a foreign country, then he, in his discretion, may take sugar, coffee, tea, hides, and so on, off the free list, and put them on the dutiable list at the rates specified in the act. It rested with him in his uncontrolled discretion, under that old act, to switch the article from the dutiable to the free list and back again when he got ready to do so.

How can we possibly gag at the constitutionality of the flexible-tariff provision here, where a rule is very definitely stated to control the President's action, and where a very definite limit upon the amount of duty is stated in the act itself, and where investigation by the Tariff Commission is required to precede his action? Even if there were no case of Hampton against United States, I think the Senate should not hesitate to say that the flexible tariff provision is wholly constitutional.

Now, Mr. President, I pass from that to the matter of the performance of the Tariff Commission. It has been stated here many times that in the seven years of their existence under the flexible-tariff provision the commission have acted in just 37 cases, 32 of which involved increases in tariff duties and 5 involved decreases. In the first place, speaking of those 37 cases, I think attention ought to be called to linseed oil, the duty on which was increased at about the same time that on flaxseed was increased, although the increase in the duty on linseed oil did not begin to compensate for the advance in the tariff rate that was given to flaxseed. Taking into consideration the very great advance in the duty on flaxseed, which was provided for the benefit of the growers of the Northwest, the duty on the product of the flaxseed in the shape of linseed oil represented actually a reduction. Be that as it may, it is claimed by many that there were six cases which really represented reductions and not merely the five which have been mentioned. In addition to that, however, I think the Tariff Commission is entitled to a statement to show the amount of work which it has accomplished since 1922, and I have such a statement here.

The fact is that the Tariff Commission has completed 182 reports and special surveys since 1922. Of that number 47 have been under the provisions of section 315, the flexible-tariff provision, 5 have been under the provisions of section 316 and 18 under the provisions of section 317.

Ninety-seven reports have been prepared under the general powers of the commission upon special subjects, and 15 special reports have been made to the President and the State Department on tariff matters. I shall later have inserted in the RECORD a table which will show the figures more in detail.

The commission has received all together 598 applications requesting investigations. Those 598 applications covered 352 different products. Some of those products were covered by applications from different persons.

The commission has instituted 83 investigations that covered 92 commodities, and that accounted for 172 of the applications.

They have sent to the President reports on 50 commodities; rates of duty have been changed by the President on 37 of them, and no action as yet has been taken on 13 of them.

The commission has had 187 applications which have been either formally withdrawn or have been suspended or dismissed by the commission. Of those, 98 were applications asking for increases in duties and 89 were applications asking for decreases in duties, and they have either been withdrawn or dismissed.

Of the remaining 282 applications, 119, the largest on one commodity, covered the special subject of wild birds and had to do with the much-derided bobwhite-quail report made by the commission. It was of importance to at least 119 citizens of the United States.

I ask to have printed in the RECORD at this point, Mr. President, a table which shows the number of applications received, investigations instituted, and reports made by the Tariff Commission.

The PRESIDING OFFICER (Mr. FESS in the chair). Without objection, it is so ordered.

The table is as follows:

SUMMARY OF ACTIVITIES OF UNITED STATES TARIFF COMMISSION

Under sections 315, 316, and 317 of tariff act of 1922, and general powers

Under section 315:		
Applications received	598	
Investigations instituted	83	
Reports completed and sent to President		47
Under section 316:		
Applications received	23	
Investigations instituted	6	
Reports completed and sent to President		5
Under section 317:		
Applications received	9	
Reports completed and sent to President		[1] 12
Reports completed and sent to State Department		6
Under general powers:		
Special investigations instituted	14	
Special investigations completed		6
Other reports and surveys completed		91
Special reports to President		6
Special reports to State Department		9
Total reports and surveys since 1922		182
Unanimous		159
Not unanimous		23

Mr. REED. In addition to that, Mr. President, the commission in the course of its seven years has built up an adequate staff whose performance has excited the admiration of all of us who have had to do with them in the course of our work on the pending tariff bill. There have been exceptions, of course—experts whose work has not appealed to us as has that of others—but in the main it is fair and true to say that the experts of the Tariff Commission are an amazingly able, honest, well-informed, helpful body of men; and it would have been utterly impossible for Congress to do more than fumble with this tariff bill had it not been for the support and information that came from those experts.

This volume [exhibiting], a copy of which every Senator has received, called "The Summary of Tariff Information, 1929," was prepared within the space of a comparatively few weeks by the experts of the Tariff Commission. No one can glance through it without realizing the mass of knowledge that has been accumulated and condensed in its 2,753 pages. Without that volume and without the men who made it we would be acting completely in the dark; without that volume we would be getting discordant statements of fact from the parties in interest; without it we would be utterly at a loss to know—we who are amateurs at most of these subjects—the uses of the various commodities, their source, the volume of production in the United States, and the amount of our foreign trade in them. It is to the Tariff Commission alone that we owe the fact that we are working on this bill with some degree of intelligence. I think it is no more than just to the Tariff Commission to make that statement.

We have had complaints of their delays. In a moment or two I want to refer to a few cases that will demonstrate that such

[1] Includes 5 reports the subjects of which were not covered by application.

complaints are not well founded. First, however, I wish to say that as a result of my own participation as a member of the committee of which the Senator from Arkansas [Mr. ROBINSON] was chairman—that is, the select committee which investigated the Tariff Commission for many months—I do not believe that any organization arranged by human ingenuity could have functioned with the personnel that composed the Tariff Commission in 1922. I believe that several members of the commission were not well chosen; that they were more interested in confounding one another than they were in resolving the questions which the commission had before it. The commission was torn by an intense personal bitterness between different members of the commission, and it was a surprise to those of us who inquired into it to discover that they functioned at all. The Supreme Court would not do well with such a spirit pervading its membership; the Senate would never get anything done if we were animated by the bitterness that animated those men. It is a wonder to me, as I say, that they have accomplished anything; but it is remarkable, I think, that those Senators who now criticize the Tariff Commission for their delays are propounding amendments to the law outlining a procedure which would only add to that delay.

Take the amendment offered by my friend the Senator from Nebraska [Mr. NORRIS]. He would require action by the Tariff Commission and action by the President just as at present, and then on top of that he would pile the further delay of action by Congress. How is it going to speed up things to retain Tariff Commission action, presidential action, and then add congressional action to that? Will it not merely add to the present baffling delay that we have experienced under the Tariff Commission procedure?

Mr. President, taking it that the constitutionality of the flexible tariff can not be successfully attacked—and I think the Supreme Court has settled that for us; taking it that the Tariff Commission, in spite of its former membership, has performed reasonably well; remembering that most of the individuals who were members of the commission and who caused that delay and that wrangling are no longer members of the commission, and that on all hands it is conceded that the present members are far better qualified for the work than were the members a few years ago; taking all those things together, there still remains the question whether it is wise as a matter of legislative policy to put this power in the hands of the commission and the President. Let us forget all our lawyers' arguments for a moment; let us come down to the common sense of the thing and try to discuss it as we would a business question, as if this were a corporation instead of a nation that we are directing. Let us try to consider, apart from all the metaphysics of this constitutional argument, whether this flexible tariff is a wise thing to have; I ask Senators to listen to a recital of a few of the cases that have developed in the past that to my mind show conclusively the necessity of some such mechanism as this in the tariff law if we are going to cope with the needs of the industry of the country during the next decade; and by "industry" I mean not only factory but mine and farm.

Writing a tariff bill a hundred years ago must have been an easy thing. Industry did not change. The aspect of an industrial question was the same at the end of the decade as it had been at the beginning. But let me show you a few of the things that have happened since 1922. The kaleidoscopic change, particularly in the chemical industry, almost passes belief.

When the tariff law of 1922 was passed, wood alcohol was made by the destructive distillation of wood, hardwood usually. It was profitable. It had as its by-products acetic acid and acetone, used then to dissolve acetylene. Everyone remembers how acetylene was used to light automobiles back in those days. That was a great outlet for the sale of acetone. That whole industry has changed over night. All of a sudden some German began to make a chemical called methanol, which is, after all, just synthetic wood alcohol; and he began to make it out of coal tar and the product of the coke ovens. In 1924 there were 48 gallons of that stuff imported into the United States, and our wood-alcohol industry could look with entire equanimity at the situation. By 1927 there were 1,700,000 gallons of that synthetic methanol imported here, and the price had fallen from $2 a gallon to 34 cents a gallon, all in the space of 3 years. Had we waited for Congressional action, hundreds, thousands of honest Americans would have seen their jobs disappear in the mists. Dozens of American industries would have closed their doors. The relief had to be quick, or it was useless. It was acted on under the flexible tariff. The Tariff Commission reported. The President acted. The industry was saved, as far as it was possible to save it against such devastating competition.

Take another one, not yet acted on, but which is acted on in this bill, and would have been acted on by the Tariff Commission and the President had we not started the consideration of this tariff law this summer. That is a substance called butyl alcohol. I am sticking to the chemicals for the moment because they furnish very vivid illustrations.

A few years ago butyl alcohol was a curiosity of the laboratory. Down to 1922 it was not important. It was, as I recall, in the catchall clause of one of the chemical schedules. In 1924 there were 14,000,000 pounds of it produced. At the present time we are producing over 50,000,000 pounds of that stuff in a year. It has come to furnish the base of most of the lacquers that are used on motor cars and on furniture, although probably when the last tariff bill was passed scarcely a teaspoonful of it was used for that purpose. It absorbs annually about 8,000,000 bushels of the lowest grade of corn. It is important to the farmer just as it is important to the motor-car manufacturer that that should be made here. If we did not protect it this year, if we were not passing a tariff bill, it could be protected under the flexible tariff.

This industry, as I say, has changed almost overnight; but it is of the highest importance to the farmers of America that the corn that is used should be their corn and not the corn of some other nation. It just happens that we are able to act upon it; but if the same thing had happened five years ago or five years hence it would have been only the Tariff Commission that could deal with it.

Take another article on which we are working, just to illustrate how the changes come overnight:

In 1922 there was a curious stuff, a colorless liquid, that chemists knew by the name of ethylene glycol. It was nothing but a curiosity. Nobody knew any particular use for it. In 1922 we used only 10,000 pounds of it. As late as 1924 there were only 145,000 pounds of it made in the United States. Last year there were about 20,000,000 pounds of it made here, because some ingenious man had discovered that it was an ideal antifreeze liquid for automobiles and that it could be used to lower the freezing point of dynamite. This year the production probably will be as much again. It is the only substance that does not boil off like alcohol, and does not clog up radiators like the other antifreeze compounds. That, coming from a laboratory curiosity, has become one of the great industries of America, and we are trying to protect it in the present bill. But if Congress were not in session, and if this did not happen to be the year when we are working on the tariff, there would be a great industry denied to America, because the article can be manufactured so much more cheaply abroad. The price has fallen from a dollar a pound to about 27 cents a pound in the last seven years. Get it down a little bit lower, and the industry here would disappear.

Take another one: We in the Senate now can not act on ordinary grain alcohol, because we have not enough information about a new process that within the last few weeks has appeared over the horizon. We shall adjourn before we shall have enough information to justify our acting intelligently on that; but a method of making grain alcohol synthetically out of natural gas has been developed within the last few weeks. Let that become a success in the year 1930, Mr. President, and an outlet for most of the blackstrap molasses of the United States will have disappeared like the snap of a finger. I wonder whether the grower of sugar cane, or the sugar refiner who finds blackstrap to be his by-product, is interested in preserving a mechanism that will give him relief if that suddenly discovered synthetic ethyl alcohol becomes a commercial product, as in every likelihood it will? I should think that every person interested in the grain or the blackstrap molasses that now goes into the making of ethyl alcohol would want to have the Tariff Commission kept, just as much as the dweller in some flimsy tenement would want a fire escape.

I have been talking about chemicals. Perhaps I had better mention one or two others—chromic acid, for example. I had never heard of it in 1922. It was in the basket clause of some obscure paragraph in the chemical schedule. To-day chromic acid has become the source from which almost all of the plating that used to be called nickel plate is being made. It has become a tremendously important industry almost overnight.

I am giving these as typical examples. I have mentioned some cases that seem to call for increases. Now let us see how it may work the other way.

In 1922 most of us, I dare say, did not know what phenol was. It is one of the several names that mean carbolic acid. It had not very much use, except for making ammunition and for disinfectant purposes and such things, in 1922. Since then, however, it has been discovered that there can be made out of phenol a resin called synthetic phenolic resin. We know it, some of us, under the name of bakelite. It is the product that is used in radio machines to make the dials and insulators with which we are all familiar. It is used in a thousand dif-

ferent ways. It is now an American industry—this bakelite, synthetic phenolic resin. The radio that the farmer buys to-day, the radio that the people in the cities buy to-day, would probably cost them very much more were it not for the action of the Tariff Commission and the President in reducing the tariff on phenol when it was found that a revival of the synthetic phenol industry in this country enabled us to produce it so cheaply that we did not need to be afraid of foreign competition.

We had been making it during the war time, because phenol then was used in ammunition. At the armistice all those synthetic phenol plants were dismantled. Then came this discovery and this demand for bakelite for radio principally, but for a lot of other industries, electrical industries in particular, and those synthetic phenol plants were revived, and our cost was so low that a tariff was no longer justified, and the Tariff Commission said so, and the President put down the duty.

While phenol does not look very important as we see it there in the list of commodities on which they have acted, it actually is important, and products made from it enter into the home of every American. That is just another illustration showing how the flexible tariff will work the other way when circumstances justify.

I have talked enough about chemicals and industrial products. Let me show, Mr. President, and through you let me show to the farmers who care to follow this debate something of what the flexible tariff has done for the farmer.

A few years ago, if the Canadian hard-wheat crop ran 150,000,000 bushels a year, it was considered to be a good crop, an excellent crop. So our American farmers were not particularly jeopardized by that. But in the fall of 1923 it began to appear that the Canadian wheat crop was going to be something bigger than had ever been known before. It looked as though their crop of wheat that year would run to 500,000,000 bushels. It looked as though the producers of American hard wheat were going to be met with competition such as they had never known in their existence. Let us see how this slow-moving Tariff Commission acted.

In December, 1923, complaint having been made, they sent their investigators to the field. They worked through the depths of winter in Canada, and hurried their information back to the commission in Washington, who completed their report by the 1st of March, 1924. A little more than two *months was* taken to compile that report.

The President, realizing the emergency, made his order on the 7th of March, 1924. Less than three months elapsed between the beginning of the investigation and the presidential order raising the tariff from 30 to 42 cents. And the farmers of America were protected from that imminent danger by that action.

How could Congress have dealt with that? How could we, by the slow methods we have here, ever have coped with an emergency like that? If the Tariff Commission had never done anything else than take that action, it would have justified every cent we have spent upon it.

That is not all. I suppose that of all the agricultural industries of the country, none comes so near to prosperity to-day as does the dairy industry, none is so nearly settled as is the dairy industry, and if there is any single fact that has contributed to the present-day comparative prosperity of the dairy industry, it is the action of the Tariff Commission and the President since 1922 in raising the duties on whole milk, on cream, on butter, and on Swiss cheese. If the Tariff Commission had done nothing else, if the President had taken no other action under the flexible tariff act, the existence of the Tariff Commission and the expenditure of the money we have spent upon it would have been justified.

Then came a commodity which we easterners do not know much about, that is, cherries in brine. We eat maraschino cherries now and then, but most of us do not know that they come from cherries which have been sulphured and have been preserved in brine. And that is a great industry out in the far West, particularly in California.

The act of 1922 attempted to put a 40 per cent ad valorem duty on cherries sulphured and in brine. Senators and Representatives who voted on that act believed that they were putting a 40 per cent ad valorem duty on that kind of cherry. But a decision of the Customs Court came from a clear sky in January, 1927, holding that cherries in brine were dutiable at only 2 cents per pound. Previously, under the 40 per cent rate, the duty had amounted to between 4 and 5 cents per pound. That decision came from the Customs Court, as I have said, out of a clear sky, cutting the duty down to 2 cents. It meant a complete surrender of that industry to the Italian producer of cherries in brine.

What did the Tariff Commission do? The Customs Court decision came in January, 1927, as I have said. The Tariff Commission ordered its investigation in March, 1927, it had it completed by December, 1927, and on December 3, 1927, the President made his proclamation increasing the duty on cherries in brine to the limit permitted him by the law. Nobody in that industry has any doubt about the zeal and the effectiveness and the usefulness of the Tariff Commission, or the value of the flexible tariff.

Mr. President, I could take time to go over a long list of commodities, to analyze the different products on which the commission has acted, but I do not believe that there would be much profit in doing so. I have tried to outline, in selecting a few typical cases, the way in which this commission has saved for America some businesses which were suddenly menaced by events which were beyond the foresight of the Congress of 1922.

I have tried, as in the case of phenol, to show how the flexible tariff works the other way and how reductions, justified by a suddenly revived industry in America that has low costs, are made, to the greater benefit of our foreign trade. It has worked both ways; it is bound to work both ways in the future.

Some criticism has been made because since 1922 the majority of the changes ordered have been increases. If we stop to think of the changing condition of industry in Europe we will not wonder at that. We fixed the duties in 1922 to some extent in the dark. In many countries the ravages of war had not been made good, and industry had not been revived, but we have seen many times in recent years, in the last five years particularly, that with the revival of their industry they copied American machinery, they have developed mass production in many industries; copying after us, they have cut their costs down through sheer, desperate necessity, and it is only to be expected that the changes made under the flexible tariff in that period to protect American industry would be increases. But if economics furnishes us any guide for the future, if the economic history of Europe and America in the past century and a half warrants us in prophesying now, I think we may reasonably prophesy that in the decades to come we will see a slowly declining commodity level. That happened after Napoleon's wars; it happened after our Civil War; we are going to see it happen again. Already it seems to be in progress.

As that tendency continues, as costs here decline, less and less protection is likely to be needed for many of our manufactured articles, and my own belief is that the proportion of decreases to be ordered under the flexible tariff will increase as the years go by, largely because of that inevitable decline in the level of commodity prices in America.

Mr. ALLEN. Mr. President, on account of my work in connection with the subcommittee of the Committee on Naval Affairs, I have been deprived of the privilege of hearing as much of this splendid debate as I would have liked to hear, but I have been reading the RECORD. I have been looking in vain for a recurrence in this debate of some words of Democratic leadership which became so familiar to the country during the campaign last fall. They were words uttered at a moment of grave concern. They were uttered by a great Democratic leader, who yet remains a great Democratic leader, who yet, in fact, is the guarantor of the continued solvency of the Democratic Party, and at the moment he spoke, he spoke to a definite point, because there was rising in the country a grave apprehension that the success of the Democratic ticket might bring an era of tariff tinkering. So Mr. John J. Raskob, to meet the trepidation of business, spoke as follows in a sober series of deliverances upon this subject, beginning on the 8th of October and continuing until the very eve of the campaign.

His political wisdom impelled him to this by the realization that the country was deeply concerned over the effect which the possible election of Governor Smith and a Democratic Congress might have upon tariff legislation.

The country then, as now, was prosperous in its industrial and commercial relations. Agriculture alone was outside the domain of this general prosperity. The business men were discussing a statement attributed to Governor Smith that be believed—

> The Underwood Tariff Act embodied the ideal method of handling tariff legislation.

The statement was injuring Governor Smith in all circles.

Therefore, Mr. Raskob began on October 8 by the declaration that—

> The Democratic nominee for President didn't mean what he said when he declared that "the Underwood Tariff Act embodied the ideal method of handling tariff legislation."

He later denied that Governor Smith had ever made such a declaration after his nomination.

Mr. Raskob stated that he felt that his experience in business placed him upon a favorable footing to understand the significance of tariff statements. Said the thorough Mr. Raskob:

The Du Pont and General Motors companies embrace widely varied lines of activity and rather broad industrial, agricultural, and financial bearings. My connections with those companies has been such as to make me keenly aware of the factors of American prosperity. I need no political warning of the fact that, under postwar world conditions, a tariff or an immigration policy which fails adequately to protect capital and labor honestly and efficiently employed in our industry and agriculture can and will promptly turn prosperity into depression.

STUDIED PARTNERS' POLICIES

Before I accepted responsibility for the Democratic campaign I satisfied myself that the Democratic platform and candidate were committed to exactly the economic principles which as a business executive and student of the economics of our system of agriculture, industry, and finance I judged to be best fitted to the maintenance and sound enlargement of our prosperity.

Mr. Raskob then states in this same article, which was officially released by him in New York in the morning papers of October 8:

The Democratic Party regards the tariff purely as an economic question. Especially, since the two parties are now in agreement on the essential doctrine that our whole industrial structure must be shielded from low-cost importations, there remains only the question of rates in particular schedules necessary to such shielding. It must be perfectly obvious that only the accurate determination of these individual rates is solely a question of economics and business judgment of various complex determinations of fact in each particular case.

To throw such a question into the political arena, to be determined on preponderance of influence, is about as sensible as it would be to charge Congress with the enactment, repeal, or amendment of the multiplication table, and is almost equivalent to permitting some private interest of great influence to procure an appropriation from the Public Treasury for its own benefit and use.

That is what our platform means when it says that we are going to restore the Wilson conception of a fact-finding tariff commission. It is also what Governor Smith means when he says he proposes to take the tariff out of politics.

ISSUES SHARP CHALLENGE

Permit me to add this in candor: If you can prove your statement that Governor Smith, at any time since he has received the Democratic nomination and accepted the Democratic platform—

There is some confusion upon the exact date upon which the Democratic candidate did accept the Democratic platform, but said Mr. Raskob:

If you can prove your statement that Governor Smith at any time since he has received the Democratic nomination and accepted the Democratic platform, has stated that the Underwood Tariff Act embodies the ideal method of handling tariff legislation, then I will resign my position and vote for Mr. Hoover.

I may say that no effort to prove that was made by Republican leadership. They were satisfied with the situation as it existed.

On October 26, Chairman Raskob, warming to his subject, stated further:

Governor Smith has clearly defined the Democratic tariff doctrine adopted to support the high standards of living now enjoyed by our people as a result of the Wilson labor-wage policy. This tariff doctrine has thrown the Republican Party into panic, and they now tell you that the Democratic Party will not support Governor Smith in this policy.

His answer to that was a statement that more than three-quarters of Members of and candidates for the Senate and the House of Representatives had signed an agreement reaffirming allegiance to the Democratic platform calling for the organization of a nonpartisan tariff commission, already provided for and would support Governor Smith's declaration in his Louisville speech that the only tariff changes he would advocate would be specific revisions in specific schedules, each considered on its own merits "on the basis of investigation by an impartial tariff commission and a hearing before Congress."

Five days later, in the last moments of the campaign, Mr. Raskob received two delegations of manufacturers and business men at Democratic national headquarters by invitation.

These delegations came out of their deep concern over what the Democratic statement might mean as to the stability of business conditions in the country. Mr. Raskob spoke to these two delegations these assuring words:

I would like to see a tariff commission with powers embedded in the Constitution like those of the Supreme Court of the United States. Its members should serve, in my opinion, for not less than 15 years and should have the assistance of an adequate body of economists and accountants.

WOULD STUDY EVERY INDUSTRY

This commission would make a scientific study of every industry to determine exactly what degree of protection it should be given. Congress would be unable to enact any tariff provisions except those recommended by this commission unless by a two-thirds vote. The two-thirds vote necessarily would mean that both parties would have to be a party to any legislation enacted in this way. In other words, the action of Congress on this basis would necessarily have an economic rather than a political basis.

Among those at the first meeting were Samuel R. Rosoff, subway contractor; Harry Uviller, president of the American Cloak and Suit Manufacturing Association; and many others.

The article states that upon their securing Raskob's assurances that he had interpreted the ideas of the candidate upon the subject of the Tariff Commission and other tariff matters correctly, he received from one of the organizations, namely, the East Broadway Merchants Association, composed of twenty-five hundred members, a resolution unanimously adopted, indorsing Governor Smith.

In this debate, when I have heard the importance of President Hoover's campaign words discussed, I have wondered why no importance has been attached to the pledges which Mr. Raskob made for Alfred Emanuel Smith and Democratic Members of Congress. I wondered if they were playing politics then for campaign purposes, or if they are playing politics now for party purposes.

In view of all that Mr. Raskob has done for the Democratic Party, are they going to ignore his pledges now? In view of the deficit he has assumed, in view of the more than a quarter of a million dollars which he gave to the campaign fund, in view of the sacrifices of his time and energies which he made and continues to make, are the leaders of his party in this body going to stamp themselves as ingrates by placing upon Mr. Raskob, the leader of their campaign, the spokesman for their candidate, the interpreter of their platform, the stigma of being insincere?

Last Friday it was said on this floor by an eminent Democrat that nothing as to the Democratic attitude upon the inflexible tariff can be inferred from anything that may have been said by irresponsible Democratic orators in the campaign—but this man Raskob was not an irresponsible Democratic orator. We all remember when the Texas convention had adjourned. There was discontent in the ranks of the Democratic Party. There was terror in the leadership. There was famine in the treasury.

Then Mr. Raskob arose in an hour of great need from the Union League Club, of Philadelphia, and offered to take over the party. Like a political Elijah, in a cloud of currency, he came to the distracted Democratic Party, saying, "Here am I. Take me." And they took him.

And they pledged him, if he told us the truth on October 31, that they were for a tariff commission, and that if they were elected they would vote that way. If they are not ready to do that, then they ought, in common honor, to reimburse him and relieve him of the present responsibility he has undertaken to underwrite the Democratic debt.

Are they going to say that the solemn pledges which he claimed he had from Democratic Members in this body and Democratic candidates did not exist, or, if they did exist, had no sincere meaning except for the political moment?

Every day the debate has proceeded has brought added evidence from all sections of the country of the intelligent interest which agriculture and the industries are manifesting in the effort to destroy the flexible provision of the tariff law. The country is in agreement with the belief that it would be a backward step in the tariff policy.

What the Senator from Ohio [Mr. FESS] in his able speech of last Friday said—

Our hope is to minimize the political influence in legislation of a tariff character—

is substantially what Chairman Raskob said to the anxious men who called upon him October 31.

Though no one would contend that the Tariff Commission has succeeded wholly, it had made progress. There is less confusion in the country touching this issue than there is usually after a debate. The country realizes that this is not lodging the power in the President to determine tariff policy. It is an administrative function which has to do with rate modifying upon a clear definition as to circumstances and the limitations under which the modifications may be made to meet changing conditions of business. It is an honest effort to continue the tendency of the act of 1922—to free tariff legislation from undue political influence. The destruction of the progress that has been made so far would mean that we travel backward to the days when political tariff tinkering was at its worst.

INVESTIGATION OF AMERICAN CAPITAL ABROAD

Mr. WALSH of Massachusetts. Mr. President, I submit a resolution, which, I presume, will provoke no discussion and upon which I ask immediate action. Briefly stated, the resolution provides for an investigation by the United States Tariff Commission into the facts of the economic or other conditions that have led and are leading to investment of American capital abroad.

Mr. President, it is deemed that there is a serious misapprehension as to the real cause of this movement of American capital, much discussed in the Senate and in the press. An investigation by the United States Tariff Commission should disclose not only the extent of these investments abroad, but, as far as can be, their causes; which may be not only differences in the standard of living between this country and other countries, but also artificially enhanced expenses of and impediments to manufacturing in many branches of industry in this country. An investigation should furnish us with helpful information upon the various aspects of this important subject.

The VICE PRESIDENT. The clerk will read the resolution submitted by the Senator from Massachusetts.

The Chief Clerk read the resolution (S. Res. 126), as follows:

Resolved, That the United States Tariff Commission is hereby directed to investigate the essential facts with respect to the investment of American capital abroad, especially in Europe, and particularly by American corporations engaged in manufacturing in the United States. The commission shall report to the Senate as soon as practicable the results of its investigation, which shall be completed within one year from the date of adoption of this resolution.

Mr. SMOOT. Mr. President, does the Senator think the Tariff Commission is the proper body to make an investigation of that nature?

Mr. WALSH of Massachusetts. Yes. I have given some thought to it and I find that under the general law the Tariff Commission has authority to cooperate with various other departments of the Government named in the old law and in the pending bill; and they are supposed to cooperate with the commission in all investigations made of tariff matters.

Mr. SMOOT. I think the Department of Commerce has all that information at the present time. If the Senator will let his resolution go over until to-morrow I will ascertain definitely about it.

Mr. WALSH of Massachusetts. Very well.

The VICE PRESIDENT. The resolution will go over.

REVISION OF THE TARIFF

The Senate, as in Committee of the Whole, resumed the consideration of the bill (H. R. 2667) to provide revenue, to regulate commerce with foreign countries, to encourage the industries of the United States, to protect American labor, and for other purposes.

Mr. TYDINGS. Mr. President, I am sorry the Senator from Kansas [Mr. ALLEN] has left the Chamber. Before he left I had hoped he would listen to a brief comment on his remarks, because we now have the gage of his intellectual capacity and honesty. His way of writing a tariff bill, taxing the American people hundreds of millions of dollars——

Mr. HARRISON. Mr. President——

The VICE PRESIDENT. Does the Senator from Maryland yield to the Senator from Mississippi?

Mr. TYDINGS. I yield.

Mr. HARRISON. Will the Senator yield for a moment to enable me to suggest the point of no quorum? It may be that we can get the Senator from Kansas back in the Chamber. If the Senator from Maryland will permit me I would like to raise the point of no quorum.

Mr. TYDINGS. Oh, no; I hope the Senator will not do that. The way the Senator from Kansas proposes to bring this question fairly before the Congress is, not that it may be fairly and scientifically debated, but to wave the bloody shirt of partisanship; to inject the heat of the last presidential campaign into it and to drive a little bit of party heat into this so-called great, scientific, and intellectual discussion, the tariff question.

The Senator from Kansas also neglected to state that the real issue here is not whether the flexible provision should be or should not be inserted in the law. The real issue is whether Congress or the executive branch of the Government shall exercise that power. Why did he not debate the pending question?

If the Senator from Kansas is hoping to write a tariff bill on that sort of basis, it will be even worse than that which can be conceived of the President exercising the taxing powers given him in the flexible provisions of the bill now before us.

Mr. TYDINGS subsequently said: Mr. President, I desire to announce that under laws passed by the Mexican Congress the President of that Republic has the power to raise and lower and make tariff taxes or duties. I have in my hand a number of translations of decrees issued by the President of Mexico and one by the President of Guatemala. This power has been in the Mexican law at least since 1885. I should like to have these translations printed in the RECORD. I also have prepared an American decree such as might be issued by the President of the United States in line with the decrees issued by the Presidents of Mexico and Guatemala. I should like to have all of these printed in the RECORD.

The VICE PRESIDENT. Is there objection? The Chair hears none.

The matter referred to is as follows:

MEXICAN TARIFF LAWS, 1885—TREASURY DEPARTMENT, SECTION 1

The President of the Republic has seen fit to direct me the decree which follows:

"Porfirio Diaz, constitutional President of the United Mexican States, to the inhabitants thereof:

"Know ye, that in exercise of the power conceded to the Executive of the Union by the law of December 11, last past, I have deemed proper to expedite the following general ordinance of maritime and frontier customhouses, of coasting trade and customhouse divisions, with the tariff and vocabulary annexed."

(Here follows 174 printed pages of a general tariff law containing 696 paragraphs of dutiable articles and elaborate administrative provisions.)

"Fifth. This ordinance shall commence to take effect from the 1st day of July of the present year.

"Given in the national palace of Mexico the 24th day of January of the year 1885.

"PORFIRIO DIAZ.

"To the Secretary of the Treasury, Lawyer Manuel Dublan.

"And I send it to you for its due fulfillment.

"MEXICO, *January 24, 1885.*"

TARIFF DECREE BY THE PRESIDENT OF THE UNITED STATES

(Porfirio Diaz Model)

TREASURY DEPARTMENT

The President of the Republic has seen fit to direct me the decree which follows:

"Herbert Hoover, constitutional President of the United States of America, to the inhabitants thereof:

"Know ye, that in the exercise of the power conceded to the Executive of the Union by the Hawley-Smoot tariff law of 1929, I have deemed proper to expedite the following general ordinance and tariff annexed."

(Here insert items of tariff increases and decreases.)

"This ordinance shall commence to take effect on the 1st of July of the present year.

"Given in the White House the 1st day of April of the year 1930.

"HERBERT HOOVER.

"To the Secretary of the Treasury, Andrew Mellon.

"And I send it to you for its due fulfillment.

"WASHINGTON, *April 1, 1930.*"

DECREE OF THE PRESIDENT OF MEXICO MODIFYING CERTAIN PROVISIONS OF THE TARIFF LAW

(Stamp on the margin of the document: Powers of the Federal Executive, United States of Mexico, Mexico, Secretariat of the Interior.)

The citizen constitutional President of the United States of Mexico has sent to me the following decree:

"Plutarco Elias Calles, constitutional President of the United States of Mexico, to the inhabitants of these States makes it known:

"That under the extraordinary powers granted the Executive of the Union by the law of May 8, 1917, I have seen fit to issue the following decree:

"ARTICLE 1. Establishes section 88–A of the law on import duties in force, as follows:

"TARIFF

"Nutritious vegetable materials:

"Section 88–A. Kidney beans of all kinds, exempt.

"VOCABULARY

"Kidney beans of all kinds, section 88–A, exempt.

"*Transitory provision*

"This decree will become effective on the day of its publication in the Diario Oficial.

"Therefore I command that it be printed, published, circulated, and duly carried out.

"Executed in the presidential palace, Mexico, on the 16th day of the month of July of 1925. P. Elias Calles, signature. Secretary of State of Finance and Public Credit, A. J. Pani, signature; by Gilberto Valenzuela, Esq., Secretary of State and of the Interior, present.

"Which I send to you for publication, etc.

"Voting effective. No reelection. Mexico, 21st of July, 1925. The Secretary of State and of the Interior, Gilberto Valenzuela, signature."

TARIFF DECREE BY THE PRESIDENT OF THE UNITED STATES

(Plutarco Elias Calles model)

TREASURY DEPARTMENT

The citizen constitutional President of the United States of America has sent me the following decree:

"Herbert Hoover, constitutional President of the United States of America, to the inhabitants of these States makes it known:

"That under the extraordinary powers granted the Executive of the Union by the Hawley-Smoot tariff law of 1929 I have seen fit to issue the following decree:

"TARIFF

"*Transitory provision*

"This decree will become effective on the day of its publication in the United States Daily.

"Therefore I command that it be printed, published, circulated, and duly carried out.

"Executed in the White House, Washington, on the 1st day of the month of April of 1930.

"HERBERT HOOVER,
"ANDREW MELLON,
"*Secretary of the Treasury.*"

DECREE OF THE PRESIDENT OF MEXICO PROVIDING THAT CORN SHALL BE EXEMPTED FROM PAYMENT OF IMPORT DUTY FOR TWO MONTHS

At the margin a seal which reads as follows:

"Federal executive power—United States of Mexico—Mexico—Secretary of Hacienda and Public Credit.

"United States of Mexico—The national shield—President of the Republic.

"DECREE OF THE MINISTRY OF HACIENDA AND PUBLIC CREDIT

"The executive of my ministry, in the exercise of the powers which the tenth fraction of article 11 of the general statute of customshouses grants, and bearing in mind the fact that the quantities of corn obtained in the last harvest are not sufficient to satisfy the needs of the inhabitants of the Republic, has been kind enough to consent that for two months, counted from the date of publication in the Diario Oficial, the cereal mentioned will not be subject to the import duties fixed by the tariff in force.

"Given in the palace of the federal executive power in Mexico the 25th day of the month of April, 1925.

"The President of the Republic, P. Elias Calles.

"The Secretary of Hacienda and Public Credit, A. J. Pani.

"Rubricas."

(Translation from the Diario Oficial of April 27, 1925.)

DECREE OF THE PRESIDENT OF THE UNITED STATES THAT THE IMPORT DUTY ON MANGANESE ORES SHALL BE REDUCED

In the exercise of the powers which the Hawley-Smoot Tariff Act of 1929 grants, and bearing in mind that the Steel Trust, which has been a liberal contributor to the campaign funds of the Republican Party, pays practically all of the import duties on manganese ores, I, the President, have been kind enough to consent that, counted from the date of publication in the United States Daily, the ores mentioned will not be subject to the import duties fixed by the tariff in force.

Given at the palace of the Federal Executive power in Washington this 1st day of April, 1930.

The President of the Republic:

HERBERT HOOVER.

The Secretary of the Treasury:

ANDREW MELLON.

DECREE OF THE PRESIDENT OF GUATEMALA MODIFYING CERTAIN PROVISIONS OF THE TARIFF LAW

Whereas articles of luxury are not appraised at their proper value; in order to aid agriculture it is necessary to insure that the required tools and implements may be obtained with the least possible hindrance, and having placed a tax on liquors manufactured within the country a tariff should be imposed on imported liquors: Therefore

Under the powers granted me by Decree No. 1061 of May 31 last, I decree:

ARTICLE 1. That effective January 1, 1921, payments in gold of import duties on merchandise passing through the customs shall be increased as follows:

(a) Payments in gold shall be made of 75 per cent of the import duties on all articles included in Sections IV, V, and VI of the tariff in force entitled, respectively: "Articles of linen and hemp, and other vegetable fibers, with the exception of cotton"; "Articles of wool"; and "Articles of silk."

(b) Payments in gold shall be made of 100 per cent of the import duties on wines, liquors, beer, and spiritous liquors included in Section XIII of the same tariff.

(c) In the same way payments in gold shall be made of 100 per cent of the import duties on all articles specified in Section XIV as "Sundry Articles," with the exception of those articles designated by the numbers 1730, 1732, 1897, 2011, and 2012.

ART. 2. That there shall be no import duties on those articles 30 per cent of the import duties on which are now paid in gold, namely: Hoes, pruning knives, ordinary machetes, sickles, weaving yarn, pitchforks, short machetes, scythes, harrows, axes, and knives.

In the same manner there shall be no import duties on those articles designated by the number "911" of Section VII, which refers to ordinary implements used by agriculturists and farm laborers.

Executed in the presidential palace, Guatemala, on the 10th of November, 1920.

C. HERRERA.

The Secretary of State on Finance and Public Credit.

JOSÉ A. MEDRANO.

DECREE OF THE PRESIDENT OF THE UNITED STATES IMPOSING AN IMPORT DUTY ON BANANAS

(Guatemala model)

Whereas the Saturday Evening Post of July 7, 1928, published an editorial advocating an import duty on bananas in order that the American people may thereby be induced to eat more apples; and

Whereas Congress has completely ignored this wise recommendation; and

Whereas, in my opinion the editor of the Saturday Evening Post, who valiantly supported me in my campaign for election to the Presidency, knows much better than the Congress what is best for the American people: Therefore

Under the powers granted me by the Hawley-Smoot Tariff Act of 1929 I decree:

That effective July 1, 1930, payments in gold of imports of bananas (known scientifically and botanically as musa sapientum) passing through the customs shall be at the rate of $1 per bunch.

Executed in the presidential palace, Washington, on the 1st of April, 1930.

HERBERT HOOVER.
ANDREW MELLON,
Secretary of the Treasury.

Mr. SHEPPARD. Mr. President, the Constitution of the United States provides that all legislative powers granted by its terms shall be vested in Congress.

Congress can not relieve itself, therefore, of the legislative function without violating the Constitution, the instrument which every Member of the two Houses of Congress has sworn to support and to defend.

It would be difficult to imagine a more serious question than the one before us.

It is the question of whether we are about to delegate a legislative power to the President of the United States.

What is that power?

It is the power to levy tariff rates within certain limits on all the articles on the dutiable list of the pending tariff bill.

Within the limits of not more than 50 per cent above and of not more than 50 per cent below the rates fixed by Congress the President may impose any rate he deems to have been shown advisable by an investigation on the part of the Tariff Commission as to differences in cost of production at home and abroad.

Significant in this connection is the fact that the President appoints this commission.

If the rate fixed by Congress on an article is 30 cents, the President, under the authority given him by the Republican Party in 1922 and now proposed to be renewed, may levy any rate above 30 cents and not over 45 cents, or any rate below 30 cents and not lower than 15 cents.

Thousands of articles of everyday use, necessity and comfort, and hundreds of millions of dollars would be involved.

The life and death of many industries, the welfare of multitudes of men, women, and children would be made to depend on the will, or the mood, of one man—perhaps on what he ate for breakfast.

If the President imposes a rate of 35 cents, or 40 cents, or 25 cents, or any other rate within the limits already mentioned he changes the rate of 30 cents established by Congress. He alters existing law. He takes the place of Congress. He legislates.

Congress can not transmit to him such power without a betrayal of the Constitution and the people.

It is hard to realize that the President has asked for such authority.

The Constitution makes Congress the sole legislative instrumentality. Not only does it vest the lawmaking power in Congress but it goes further and specifically ordains that Congress shall levy duties.

The proposal under debate substitutes the President for Congress in the matter of levying duties within limits alarmingly wide. Tariff taxes touch humanity at every step from infancy to dissolution. The power to tax is the power to destroy.

The proposal confronting us clothes the President with legislative power.

It merges the Capitol in the White House.

It deposits the dead body of a suicide Congress at the feet of Herbert Hoover.

What a melancholy spectacle it would afford—the remains of a once courageous and coequal branch of government which yesterday might have stood against the world!

Assuredly there would be none so poor to do it reverence.

Not even pity would be its due—only the measureless contempt of mankind.

Congress has set up many executive agencies to carry out its enactments—such agencies as the Federal Trade Commission, Interstate Commerce Commission, Civil Service Commission, Tariff Commission, Children's Bureau, Women's Bureau, Public Health Service, Bureau of Labor Statistics, Federal Reserve Board, Shipping Board, Farm Loan Board, Federal Farm Board, the various departments.

These organizations do not make laws. They put them into effect.

The measure under consideration enables the President to make law—to legislate.

It destroys so far as its operation is concerned one of the most vital features of our system of free government—the separation of the executive, legislative, and judicial functions.

It is a part of that process of concentration in government and industry which is the most appalling mark of the time, a process which is banishing freedom and opportunity from American life.

It makes the cynic laugh, the patriot grieve.

Mr. BARKLEY obtained the floor.

Mr. HARRISON. Mr. President, I suggest the absence of a quorum.

The VICE PRESIDENT. The absence of a quorum being suggested, the clerk will call the roll.

The Chief Clerk called the roll, and the following Senators answered to their names:

Ashurst	George	La Follette	Smoot
Barkley	Gillett	McKellar	Steck
Bingham	Glass	McMaster	Steiwer
Black	Glenn	McNary	Stephens
Blaine	Goff	Metcalf	Swanson
Blease	Goldsborough	Moses	Thomas, Idaho
Borah	Gould	Norris	Thomas, Okla.
Bratton	Greene	Nye	Townsend
Brock	Hale	Oddie	Trammell
Brookhart	Harris	Overman	Tydings
Broussard	Harrison	Patterson	Vandenberg
Capper	Hastings	Phipps	Wagner
Caraway	Hatfield	Pine	Walcott
Connally	Hayden	Pittman	Walsh, Mass.
Cutting	Hebert	Ransdell	Walsh, Mont.
Dale	Heflin	Reed	Warren
Deneen	Howell	Robinson, Ark.	Waterman
Dill	Johnson	Robinson, Ind.	Watson
Edge	Jones	Schall	Wheeler
Fess	Kean	Sheppard	
Fletcher	Kendrick	Simmons	
Frazier	Keyes	Smith	

The VICE PRESIDENT. Eighty-five Senators have answered to their names. A quorum is present.

Mr. BARKLEY. Mr. President, in the discussion of the question now pending before the Senate I find myself in a position of agreement with many things stated by those Senators who advocate the amendment offered by the Senator from Utah [Mr. SMOOT]. I join with the Senator from Pennsylvania [Mr. REED] in expressing the highest regard for the work performed by the Tariff Commission in matters of investigation, in the assembling of facts, not only in the performance of their own duties in recommending rates to the President, but in enabling members of the Finance Committee and of the Senate generally to have a better picture of the tariff situation, a better picture of the trade relations of our own country with other countries; and I think, on the whole, the work of the tariff experts is to be commended. I think, on the whole, the investigators sent out by the Tariff Commission have been honest, conscientious, hard-working men; and, so far as I am personally concerned, the result of their labors has been of invaluable assistance to me as a member of the Finance Committee in the consideration of this tariff bill.

However, my admiration for the work of the Tariff Commission in that respect, my confidence in the unselfish attempt on the part of its experts to obtain information for the benefit of Congress and for the benefit of the President, does not in any way cloud my judgment as to the propriety of the delegation of power involved in the pending amendment.

Mr. President, the Senator from Pennsylvania—who, I regret, is not on the floor at present—undertook to justify this delegation of power by going back to the year 1794, in the administration of George Washington, and making reference to an act of that year, passed by many men in the Congress who had been members of the Constitutional Convention, and signed by the President of the United States, who happened to be the president of the convention which wrote the Constitution; and he said:

> Surely if these men, who ought to have known what the Constitution meant, who ought to have had some conception of its powers and obligations, saw fit, almost within the shadow of the convention hall in Philadelphia, to confer upon the first President power to issue embargoes, and—

As the Senator from Pennsylvania inaccurately said—

> to fix rates of duty upon commerce, we ought not to hesitate to do it now.

Mr. President, the exercise of that power in 1794 was not the exercise of the taxing power conferred upon Congress by the Constitution. In the act referred to by the Senator from Pennsylvania there is no mention of duties or imposts. There is no attempt to delegate to the President the power to levy taxes, the power either to increase or decrease rates; but the delegation of power in the act of 1794 was purely a delegation of war power because of the situation that then existed, with an impending or threatening conflict between the United States and France, and possible difficulties between the United States and Great Britain.

In order that the Senate may understand precisely what this act did, I shall read it. It is very brief. It is the act of June, 4, 1794:

> *Be it enacted, etc.,* That the President of the United States be, and he hereby is authorized and empowered, whenever, in his opinion, the public safety shall so require, to lay an embargo on all ships and vessels in the ports of the United States, or upon the ships and vessels of the United States, or the ships and vessels of any foreign nation, under such regulations as the circumstances of the case may require, and to continue or revoke the same, whenever he shall think proper. And the President is hereby fully authorized to give all such orders to the officers of the United States as may be necessary to carry the same into full effect: *Provided,* The authority aforesaid shall not be exercised, while the Congress of the United States shall be in session. And any embargo, which may be laid by the President as aforesaid, shall cease and determine in 15 days from the actual meeting of Congress next after laying the same.

So that, Mr. President, in the exercise of a war power that might be found necessary during a recess or vacation of Congress, the President of the United States was not authorized to lay and collect taxes. He was not authorized to transfer commodities from one classification to another. He was not authorized to reduce or to increase any rate of tariff taxation or any other form of taxation which had been enacted by the Congress, but he was merely given the power to lay an embargo, not only upon foreign ships that might be in our ports or might be headed to our ports but upon American ships transporting commerce between the United States and every other country; and even in that effort to delegate the war power to the President it was provided that it should not be exercised at any time when Congress should be in session, and that the power conferred upon the President, or any embargo laid by him under that authority, should cease within 15 days after the assembling of Congress next after the proclamation had been issued.

So it does not seem quite appropriate for the Senator from Pennsylvania to seek to persuade us that because one hundred and forty-odd years ago Congress empowered a President to lay an embargo upon commerce with certain foreign countries we are to take that as an example of the right or power of Congress to delegate to the President authority to levy and collect taxes.

I presume that it is, as some Senators have suggested, purely academic to discuss the constitutionality of a law upon which the Supreme Court has passed judgment; and if we are prepared to admit that the discussion of that decision and the wisdom or propriety of it is beyond cavil or question, we are at least not denied the right to discuss the wisdom of the policy. In order that we may understand what the Constitution did, what its environment may have been, what was in the minds of the framers, it may not be entirely out of place to draw briefly a picture of the background which was responsible for it.

Our forefathers met in convention to protest against the exercise of the taxing power by the King of England without

the consent of the Colonies. It was not because they objected to the size of the stamp tax. It was not because they objected to the form of that taxation as compared with any other form of taxation that might have been laid upon the Colonies by the British Crown. It was not, either, because they objected to being taxed, because it would have been infinitely cheaper, infinitely more easy and more convenient, for the colonists to have submitted to the pittance of a tax as compared to the enormous expense in treasure and blood involved in resisting the power of the mother country to tax them without giving them a voice in the processes of taxation. So when the framers of our Constitution—many of whom had been soldiers in that war, all of whom understood the fundamental doctrines that underlay that war, many of whom had been members of the convention that promulgated the Declaration of Independence—met in Philadelphia to write a constitution, they had behind them the whole history of Anglo-Saxon conflicts of authority between the people and the Crown. And so we must, if we can, undertake to insert our eyes into their bosoms to find what actuated them in writing this Constitution under which we have lived for nearly a century and a half.

I do not desire to discuss the academic question of the wisdom of the separation of our powers into Executive, legislative, and judicial; but I do desire to emphasize, if I may—and emphasis seemingly is needed now—the impropriety and the shortsightedness of undertaking to shirk the responsibility which in my judgment was irrevocably placed upon the shoulders of Congress.

I desire rather to approach this subject from the standpoint not only of its constitutionality but the wisdom of the course which is urged upon us by both sides to the controversy.

In the Constitutional Convention which produced the instrument under which our Government has grown and prospered there were lengthy discussions as to the functions of the three branches of the Government which were to be established. The framers of the Constitution had before them the background of events out of which had grown the Revolution and the independence of the colonies. They were particular to emphasize their determination that all legislative functions should be performed by the representatives of the people. Therefore, one of the first things which they provided was that—

> All legislative power shall be vested in a Congress composed of a Senate and House of Representatives—

And so forth.

What did they mean by all legislative power? Did they mean all legislative power except that which Congress might at a later date attempt to shirk? Did they mean all legislative power except the power of taxation? Every part of the Constitution answers these questions in the negative. In later articles and clauses of the instrument taxation is dealt with specifically so that we can not doubt that the Constitution intended that all tax legislation, as well as other legislation, should be vested in the Congress.

As stipulated that all legislative power should be vested in Congress, the framers proceeded to outline some of the exclusive powers of Congress, among them being—

> the power to levy and collect taxes, duties, imposts, and excises.

What is the legislative power? The power to promulgate a rule of action by which the people who are subject to that law are to be governed in their relationship not only to one another but to this thing we call government, which is only another name for organized society. Therefore, we are compelled to draw the conclusion that among the powers included in the definition of legislative power must be included the power of taxation; for it was upon the principle of taxation largely that our independence as a Nation was established in all of the documents that accompanied our separation from the mother country. It was in the debates of the Constitutional Convention, for in that convention there were present, as there are always present in the inception of governments and in the exercise of their authority, two distinct schools of thought. One school believed that we should not confer power upon the people, and that only the educated and the well born and the wealthy should be clothed with the power of self-government, and that such blessings as the masses might enjoy under the Government should fall into their mouths as the crumbs fell into the mouth of Lazarus from the table of Dives.

On the other hand, there was the opposite of that theory, to which I have already referred, that, without regard to distinctions of wealth, without regard to distinctions of physical power or prowess, without regard to ancestry, without regard to education or ignorance, every man upon whose shoulders lay the responsibility to support his government, either by his own blood or by his money in the form of taxes, was entitled to representation in the body that levied those taxes upon him and compelled him to pay them.

Therefore, Mr. President, the language of the Constitution which confers upon Congress the power of exclusive legislation must have included the power of taxation, because taxation is legislation, and has always been recognized, not only in our country but in the world at large, as the exercise of legislative power. Not only is it recognized as legislation on the part of the National Government, but in every State constitution in the 48 States of the American Union the right to levy and collect taxes is an exclusive right which is conferred upon the legislature of the State, and in no State constitution with which I am familiar is there any authority given to lay and collect taxes, to raise or lower income taxes or property taxes, by even so much as a penny, that may come out of the pockets of the people of that Commonwealth.

What kind of taxation does this power relate to? The Constitution does not specify or limit. It does not attempt to segregate the different methods of taxation. Therefore, it must include all forms of taxes which can be levied.

It includes not only tariff duties, but income taxes and all other forms of taxation which the Federal Government may levy and collect to raise revenues for its support.

Taking the background of Anglo-Saxon history, the cause of the Revolution itself, which was the claim of the mother country that it had the right to tax Americans without their consent, we can not believe that this provision or any provision of the Constitution was intended, or contemplated that taxes could be levied by any other authority than the Congress of the people, chosen by them, responsible to them, and subject to be removed by them at frequent elections.

President Hoover must have had in mind this background when, on October 15, 1928, in the city of Boston, he uttered this sentiment:

> The Tariff Commission is a most valuable arm of the Government. It can be strengthened and made more useful in several ways. But the American people will never consent to delegating authority over the tariff to any commission, whether nonpartisan or bipartisan. Our people have the right to express themselves at the ballot on so vital a question as this.
>
> There is only one commission to which delegation of that authority can be made. That is the great commission of their own choosing, the Congress of the United States and the President. It is the only commission which can be held responsible to the electorate.

And so forth. What did the President have in mind when he used that language? Did he have in mind possible action by either of these agencies without the cooperation of the other? His language admits no such interpretation. He meant the orderly process under the Constitution of enactment by both Houses of Congress and the approval of the President, both of which are required to complete an act of legislation.

Not only did the framers of the Constitution confer the exclusive power upon Congress to levy and collect taxes but they limited the power to initiate such taxation. In section 7 of Article I it is provided that—

> All bills for raising revenue shall originate in the House of Representatives.

Why was this limitation placed in the Constitution? Because the framers were so determined to retain in the hands of the people power over their purse that they were not willing for any other branch or subdivision of the Government to start the processes of taxation except that branch which was directly responsible to them, which could be punished or rewarded for their course in all matters of taxation and expenditure.

Under the Constitution the Senate, even though now Senators are elected by the people and are responsible to them, can not originate a tax bill. It can not originate a measure laying one dollar in taxes upon the American people. Yet we are seriously asked to delegate to the President a power which we do not ourselves possess.

For you may gloss it over by any language that suits your fancy, when the President by an Executive order increases the taxes which must be paid by the American people, he originates a measure for raising revenue, a thing which the Senate of the United States can not do.

We are told that this delegation of legislative authority is wise and proper, because it is limited in scope; that the President can only raise or reduce rates of tariff taxation to the extent of 50 per cent of the rates fixed by Congress.

But if it is constitutional and wise to permit him to undo the work of Congress to the extent of 50 per cent, why not give him

full sweep of power to fix all rates, to reduce them or increase them according to his inclinations?

Why deny to unprotected, and maybe helpless, industries any relief whatever under this benign arrangement, when it may be that those which Congress has neglected need assistance more than those who have received a portion of what they demand? If we can abdicate a portion of the exclusive constitutional power with which Congress was invested by the forefathers, why stop at a portion? Why not let Congress relieve itself of all the burdens of drudgery in matters of taxation and turn it over to the Executive?

And if we have the power, and it is wise, to abdicate our constitutional responsibility in the levying of tariff duties in the way of taxation for raising revenue, why not abdicate it with reference to all forms of taxation?

If the Executive is more prompt and more wise in changing rates of tariff taxation, why is he less prompt and less wise in the matter of changing rates of income taxes?

We are told that there will be a surplus in the Treasury at the end of the year that will justify another reduction in taxes.

Then, why waste the time and the money of the people by holding or prolonging a session of Congress to reduce the income taxes? Why not delegate to the President the power to reduce income-tax rates so as to absorb the expected surplus? And if this would be wise and proper, why not also clothe him with power to raise income-tax rates when there is an approaching deficit in the Treasury?

The exclusive power to levy taxes is exclusive as to all forms of taxation, and if we can delegate a part of it as to one form of taxation, we can delegate a portion or all of it as to all forms of taxation.

There is no analogy between the power of taxation as exercised by the President under the flexible provisions, and the power of Congress to regulate railroad rates through the Interstate Commerce Commission.

In the first place, the Constitution does not say that "All bills for regulating commerce shall originate in the House of Representatives." That limitation applies only to bills raising revenue.

But Congress has never delegated to the President any power whatever in the regulation of commerce by the fixing of railroad rates. Congress established the Interstate Commerce Commission, as an agency of Congress, and not of the Executive, for the purpose of carrying out the laws enacted by Congress for the regulation of railroad rates and practices. The President plays no part in the work of the Interstate Commerce Commission. He can not change a single rate on any railroad in the United States either before or after determination by the Interstate Commerce Commission. He can not receive its proceedings or nullify its orders. He can not expand or contract its activities or its powers. This commission is the creature of Congress, and it does not consult nor is it responsible to the President in the true conception of its functions.

Therefore, the creation of this commission and the functions and powers with which Congress has clothed it offers no parallel for the proposal here to surrender the duty and obligation which the Constitution lays upon Congress alone, that of levying the taxes which the American people must pay for the support of their Government.

Not only did the framers of the Constitution propose to hold Congress responsible to the people for the amount of revenue raised for the Government, and the manner of its assessment and collection; but they also proposed to hold Congress responsible for its expenditure. For in section 8, article 1, of the Constitution, in the enumeration of its powers, it is provided that Congress shall have power—

> To raise and support armies, but no appropriation of money to that use shall be for a longer term than two years.

Would any person contend that Congress could delegate to the President, or to any other agency, the power to extend an appropriation for the Army for a longer period than two years?

In paragraph 7 of section 9, Article I, the Constitution says:

> No money shall be drawn from the Treasury but in consequence of appropriations made by law—

And so forth.

Would it be seriously contended that Congress could delegate to the President or any other agency the power to draw money from the Treasury without the passage of a law providing for its expenditure?

Congress can not abdicate its authority over the money in the National Treasury, and it can not properly do it with reference to the collection of that money in the form of taxes.

But we are told by some of the advocates of this congressional surrender that Congress is slothful, slow of action, and can not act with that precision and foresight which is necessary to those who are in a hurry.

We are told that Congress is possessed of nothing but incapacity; that it can not obtain the facts upon which tariff legislation should be based; that it engages in logrolling and back scratching, as a result of which unjust and indefensible rates are inflicted upon the people; that it can only revise the tariff once in many years; and that somebody else ought to have the power to revise it piecemeal during these congressional lapses into innocuous desuetude.

We have heard dignified and venerable Senators, who are suspected of a desire to be returned here, denounce both branches of Congress in terms which make it difficult to understand why they would want to remain in such company.

We are told that Congress can only engage in tariff revision at long intervals, and that even if it desires or is capable of dealing with limited articles it can not do so because of delays and the inclusion of other articles.

This has not been the history of Congress. It is true that a general revision of all the schedules generally requires several months. But it has required several years for the Tariff Commission to investigate single items and report them to the President under the flexible provisions of the present law. I say this not in criticism, but merely as the statement of a fact.

But Congress has on numerous occasions dealt with a limited number of schedules or even items in matters of tariff rates and has been able to produce legislative results with promptness and certainty.

In the Fifty-third Congress a tariff bill was introduced in the House December 19, 1893 (H. R. 4864), and on—

December 21 it was reported to the House.
February 1, 1894, it passed the House.
February 2, was referred to Finance Committee.
July 3, passed the Senate.

In the Sixty-second Congress a tariff bill (H. R. 4413, free list) was on—

April 12, 1911, introduced in the House.
April 19, reported to House.
May 8, passed the House.
May 9, referred to Finance Committee.
June 22, reported by the Finance Committee.
August 1, passed by the Senate.
August 18, vetoed by President.

In the Sixty-second Congress a tariff bill (H. R. 11019, wool) was on—

June 2, 1911, introduced in the House.
June 6, reported to the House.
June 20, passed by the House.
June 21, referred to Finance Committee.
June 22, reported to the Senate.
June 27, passed the Senate.
August 17, vetoed by the President.

In the Sixty-second Congress a tariff bill (H. R. 12812, cotton) was on—

July 26, 1911, introduced in the House.
July 27, reported from committee.
August 3, passed by the House.
August 4, referred to Finance Committee.
August 10, reported to Senate.
August 17, passed by the Senate.
August 22, vetoed by the President.

In the Sixty-sixth Congress a tariff bill (H. R. 15275, emergency agriculture) was on—

December 20, 1920, introduced in the House.
December 20, reported from committee.
December 22, passed the House.
December 27, referred to Finance Committee.
January 17, 1921, reported to the Senate.
February 16, passed by the Senate.
March 3, vetoed by the President.

In Sixty-seventh Congress, a tariff bill (H. R. 2435, emergency tariff) was on—

April 12, 1921, introduced in the House.
April 14, reported from committee.
April 15, passed by the House.
April 16, referred to Finance Committee.
April 30, reported to the Senate.
May 11, passed the Senate.
May 27, approved by the President.

These are but a few instances to confound those who put forth the spurious claim that Congress can not be relied upon to act with promptness and effectiveness even in the passage of tariff bills when the circumstances justify prompt and effective action.

Those who seek this unwise departure are not actuated by the fear that Congress will not act. They desire to take the enactment of tariff legislation away from the representatives of the

people, away from public discussion, away from the view of the people to the quiet precincts of secrecy where the people who have to bear the burden and pay the tribute will not know what is happening to them until it is too late to protest.

Mr. FESS. Mr. President, will the Senator from Kentucky yield to me?

The VICE PRESIDENT. Does the Senator from Kentucky yield to the Senator from Ohio?

Mr. BARKLEY. I did not desire to yield until I shall have finished, but I will yield to the Senator.

Mr. FESS. I wanted to ask the Senator from Kentucky how many items were in the emergency tariff act of 1921? Were there 11 or 16? There were not more than 16?

Mr. BARKLEY. I have not counted them, but there are quite a number; I imagine there were as many as 11, and there may have been more than 16.

Mr. FESS. No; there were not more than 16, that bill being confined to agricultural products, as contrasted with the pending bill, which contains over 2,000 items.

Mr. BARKLEY. The Senator from Ohio evidently fails to catch the drift of my argument. I am not contending that Congress can pass a general tariff bill as rapidly as it can pass a measure with a single item or schedule affecting the rates in all schedules. What I am attempting to do is to show that whenever Congress is confronted with a necessity, with an emergency, with the facts before it as to a limited number of items, it can act more promptly and more efficiently than can the executive branch of the Government, and can act much more promptly and efficiently and expeditiously than has been done by the Tariff Commission up to date; although I do not say that in criticism of the Tariff Commission but merely as a statement of a fact. What I am saying is that upon a report by the Tariff Commission to the Congress of the United States setting forth the facts with respect to any item of taxation in the tariff law, we can promptly act upon that recommendation without delay, as has been shown even when we have had no report from a tariff commission and when we were required to rely upon our own information, gathered more or less at random from whatever sources were available, in considering the wisdom of an increase or a decrease in the tariff rate on a given commodity. Under the amendment which has been offered by the Senator from Nebraska [Mr. NORRIS], which I understand we shall accept as a part of the amendment offered by the Senator from North Carolina [Mr. SIMMONS], when such a bill is introduced after a report from the Tariff Commission and is being considered by either House of Congress any amendment not germane to that item is not permissible under the law, and it is not permissible even now in the House of Representatives under the rules which are in vogue there.

Mr. NORRIS. Mr. President——

The VICE PRESIDENT. Does the Senator from Kentucky yield to the Senator from Nebraska?

Mr. BARKLEY. I yield to the Senator from Nebraska.

Mr. NORRIS. I should like to ask the Senator if this would not probably be true: If the amendment were the law, and an item reported upon by the Tariff Commission were embraced in a bill coming before the Senate, would not such a bill probably be passed by unanimous consent if it were in accordance with the recommendations of the Tariff Commission?

Mr. BARKLEY. I have no doubt that many instances of that nature would occur. Where a report is made to Congress and under the constitutional provision a bill based on such report originates in the House of Representatives and is passed there and comes here with a report from the Tariff Commission, I have not any doubt whatever that such a measure would receive prompt and almost unanimous approval of the Senate of the United States, which would be in compliance with my conception of my duty as a member of the legislative branch of our Government. So, Mr. President, because that can be done, and will be done, there is certainly no reason why this great taxing power should be delegated to anybody except the representatives of the people as provided in the Constitution of the United States.

Mr. President, we frequently hear criticism hurled against the legislative branch of our Government by men on the outside, and sometimes by Members of the Congress itself. We are told that we are slothful and inefficient. It is only a continuation and prolongation of the fear which found expression at the Constitutional Convention and among the Tories of the Colonies who refused to cooperate with the patriots in establishing independence, that the people are incompetent to govern themselves; that they ought not to be allowed the right to choose their representatives. Even now we hear reactionary men declare that the Senate of the United States has deteriorated very materially and substantially since the people were given the right to elect United States Senators.

Mr. President, I have faith in this body and I have faith in the other body which is a coordinate branch of the Legislature of this Nation. Whenever I lose faith in the honesty and in the integrity and the ability and single mindedness of the two branches of Congress, then will I lose faith in the people of our country and of all countries and of all parliamentary governments. I hope the time may never come when I will lose so much confidence in the exercise by the American people of the right to have a voice in their legislation and in the choice of their representatives and then lose faith in those men when they have been chosen, that I would be willing to crawl out from under any part of the responsibility placed upon me by that Constitution.

I do not believe, in spite of all their frailties and shortcomings, that the American people are yet ready to surrender this great power to levy taxes upon them and to expend the money after it has been received in the Treasury as revenue of the Government. For that reason I shall support the amendment offered by the Senator from North Carolina [Mr. SIMMONS] and the amendment offered to that amendment by the Senator from Nebraska [Mr. NORRIS] in the hope that they may be adopted.

Mr. BRATTON and Mr. NORRIS suggested the absence of a quorum.

The VICE PRESIDENT. The absence of a quorum being suggested, the clerk will call the roll.

The Chief Clerk called the roll, and the following Senators answered to their names:

Ashurst	Glenn	McNary	Steck
Barkley	Goff	Metcalf	Steiwer
Bingham	Goldsborough	Moses	Swanson
Black	Gould	Norris	Thomas, Idaho
Blaine	Greene	Nye	Thomas, Okla.
Blease	Harris	Oddie	Townsend
Borah	Harrison	Overman	Trammell
Bratton	Hastings	Patterson	Tydings
Brock	Hatfield	Phipps	Vandenberg
Brookhart	Hayden	Pine	Wagner
Capper	Hebert	Pittman	Walcott
Caraway	Heflin	Ransdell	Walsh, Mass.
Connally	Johnson	Reed	Walsh, Mont.
Deneen	Jones	Robinson, Ark.	Warren
Dill	Kean	Robinson, Ind.	Waterman
Edge	Kendrick	Schall	Watson
Fess	Keyes	Sheppard	Wheeler
Fletcher	La Follette	Simmons	
Frazier	McKellar	Smith	
George	McMaster	Smoot	

The VICE PRESIDENT. Seventy-seven Senators having answered to their names, a quorum is present.

Mr. WALSH of Massachusetts obtained the floor.

Mr. NORRIS. Mr. President——

The VICE PRESIDENT. Does the Senator from Massachusetts yield to the Senator from Nebraska?

Mr. WALSH of Massachusetts. I yield to the Senator from Nebraska.

Mr. NORRIS. The Senator from North Carolina [Mr. SIMMONS] is now here, and if the Senator from Massachusetts will yield for the purpose——

Mr. WALSH of Massachusetts. I understand that the Senator desires to perfect his amendment. I yield for that purpose.

Mr. NORRIS. I desire to perfect the amendment I have proposed; and I think when it is perfected the Senator from North Carolina will accept it and make it a part of his amendment.

Mr. WALSH of Massachusetts. I yield for that purpose.

Mr. NORRIS. Mr. President, the other day I offered an amendment. After consultation with several Senators, and further consideration of the subject myself, I have modified my amendment to the substitute offered by the Senator from North Carolina by confining the amendment to items instead of schedules; and in its perfected form I should like to have it read by the clerk.

The VICE PRESIDENT. Does the Senator offer it as an amendment at this time?

Mr. NORRIS. Yes; I offer it as an amendment.

The VICE PRESIDENT. The amendment will be stated.

The CHIEF CLERK. The modified amendment reads as follows:

Any bill having for its object the carrying out, in whole or in part, of the recommendations made by the commission in any such report shall not include any items not included in such report; and in the consideration of such bill, either in the House of Representatives or in the Senate, no amendment thereto shall be considered which is not germane to the items included in such report.

Mr. NORRIS. Mr. President, as I understand, the Senator from North Carolina is willing to accept that amendment.

Mr. SIMMONS. Mr. President, I think the amendment is a very proper one, and I am glad to accept it.

The VICE PRESIDENT. As the Chair understands, the Senator from North Carolina modifies his amendment to include this language.

Mr. SIMMONS. That is my purpose.

Mr. NORRIS. That having been attended to, before I leave the subject I desire to suggest to the Senator from North Carolina another amendment, on page 2, line 7, of his amendment.

It now reads as follows:

If the commission finds it shown by the investigation that the duty imposed by law upon the foreign articles does not equalize the differences in the cost of production of the domestic article and of the foreign article when produced in the principal competing country or countries, then the commission shall report to the President—

I move to amend by inserting, after the word "President," in line 7, page 2, the words "and to the Congress."

Mr. SIMMONS. Mr. President, I am willing to accept that amendment.

The VICE PRESIDENT. The Senator from North Carolina modifies his amendment as stated by the Senator from Nebraska.

Mr. NORRIS. That being done, let me suggest that down on line 24 the Senator's substitute now reads as follows:

(b) No report shall be made by the commission to the President.

Having changed that, I suggest that we strike out the words "to the President," so that it will read:

No report shall be made by the commission under this section.

Mr. SIMMONS. That is acceptable, Mr. President.

The VICE PRESIDENT. The Senator from North Carolina modifies his amendment as stated.

Mr. NORRIS. I thank the Senator from Massachusetts.

Mr. SMOOT. Mr. President——

The VICE PRESIDENT. Does the Senator from Massachusetts yield to the Senator from Utah?

Mr. WALSH of Massachusetts. I yield to the Senator from Utah.

Mr. SMOOT. I should like to have the amendment as modified printed, and let that be the amendment that will be offered and considered.

The VICE PRESIDENT. Without objection, that will be done.

Mr. SIMMONS. Mr. President, I wish to have that done. I desire to have my amendment printed so as to include the three amendments offered by the Senator from Nebraska.

The VICE PRESIDENT. The amendment will be printed as modified.

Mr. SMOOT. In other words, this is all the amendment of the Senator from North Carolina?

Mr. SIMMONS. It is all my amendment.

Mr. WALSH of Massachusetts. Mr. President, I shall detain the Senate only for a few minutes. I fully realize that the time for general debate for and against the amendment providing for a flexible tariff, with power granted to the President amounting to lawmaking with respect to the tariff, has passed. I shall content myself, therefore, with a final appeal to my colleagues upon an aspect of this question that, in my opinion, transcends all others; namely, the position that patriotic considerations and historic traditions should dictate.

There has been a vast deal of propaganda in this country of recent years tending to belittle, ridicule, and destroy the prestige of the Congress. A colleague a few days ago made the statement that he did not believe that any Senator realized the deep and undeserved discredit into which the Congress of the United States had been brought by these attacks and misrepresentations. The powerful searchlight of the modern methods of publicity is to-day, as never before, turned wide open and has accentuated to an alarming degree the shortcomings and even delinquencies that have probably always existed in parliamentary bodies. Many apparently fail to realize that, whereas the Members of the Congress, being human, err—yet the institution called the Congress should not in consequence be discredited and undermined. Has public indifference reached the point where forgetfulness exists that the Congress of the United States stands for the voice and control of the people in their affairs; that it is now, as always, the final hope and the best method yet devised for the preservation of liberty and justice among a free people?

If the Congress fails, representative government fails, and with it a social organ of immense value. In spite of irrelevant discussion and some incidental unduly prolonged debate, this very procedure in the Senate now in connection with this tariff bill is a great and mighty reexamination and review before the country of the whole tariff situation. Notwithstanding the certain measure of truth in the denunciations of those who expect the same speed and efficiency in a free legislative body that exists in the board of directors of a private corporation, yet who will deny that an informative, illuminating, and safeguarding study and consideration of an important and difficult question is not being here and now secured and is really of service?

Undoubtedly much of the unfavorable sentiment that has been voiced against the Congress, perhaps particularly against the Senate, and especially in connection with the tariff, has arisen from a growing feeling of our incompetency. We have created conditions with respect to tariff complexities that make congressional control of the tariff necessarily difficult; and then we turn with zest for refuge to bureaucracy, and sink still farther into a mire. Such in general is the present state of the public mind that we turn to meet every evil with boards to regulate, direct, control, and even imprison the private citizen for breaches even of by-laws of these subordinate arms of the Government. And then comes a fresh crop of evils and more boards. Edmund Burke hit off this state of mind and this practice by saying that there is inherent degredation and oppression in the acts of a central government always "as it descends from a kingdom to a province, from a province to a parish, and from a parish to a private house."

The growing tendency, upon the basis of the theory of time-saving and securing efficiency, of abandoning direct and complete control of lawmaking by the elected representatives of the people is the great menace of our times. We have gone too far in that direction already; and furthermore we have discredited ourselves when we have created commissions and boards innumerable and given them carte blanche power to direct and control the interests of our people, subject only to the limitations of the courts in cases where they obviously and flagrantly exceed their authority. Another challenge is here and we must meet it. Just now it is the shunting and dismissing of tariff discussion, tariff consideration, and tariff control from the Congress to a bureau—to an agency of the Government other than that provided for lawmaking by the Constitution.

Let me remind you that whatever excuse and justification you have had in the past in delegating the power and responsibility of the Congress to indirect agencies, that excuse has passed; and especially with respect as to this subject of taxation above all others. If you recall to mind the story of the struggles and the sacrifices of your forefathers and their imperishable words, your eyes should be open now. Here and now you are dealing with a subject that no human being can say was outside and beyond the domain of the deliberations and plans of the founders of this country. And for one hundred and forty years the exclusive right of exercising the taxing power has been preserved in the form that the Constitution prescribed. However else we may have abridged or compromised the basic principles of the Constitution, we at least have not abandoned this one.

Gentlemen, you are engaged in an assault upon parliamentary government. No one can foresee where this movement will lead or end. One thing is certain: It risks the beginning of the end of that fundamental principle upon which our institutions were built, our happiness secured, and our prosperity maintained up to the present hour. This proposed change would not even be thought of except it is the fashion of the time to belittle and discredit parliamentary government. But the tragedy of it all is that we ourselves are joining in the movement to undermine parliamentary government, which means to put ourselves in the limbo of rejected things.

I repeat, in order that there be no misunderstanding and scuttling behind fogs or imaginary issues, that the primary, the crucial, and the final question here is: Shall we abdicate and relinquish the taxing power and place it where the Constitution expressly forbids it to be placed? Do not plead that it is only partial; that it is confined and limited by a rule; that it is only temporary. It is the step that counts and in all probability one that counts finally. The first proposal in 1922 was only for two years; and then that limitation was abandoned. At first it was to be greatly safeguarded and restricted; now it is proposed to expand it, extend it, and make it permanent.

You say the need is to provide a means of meeting an emergency! What would you think of a proposal giving the President the authority to increase the Army or the Navy upon investigation and advice by boards of Army or Navy officers, whenever he deemed an emergency existed? If increase of power and responsibility in the field of taxation when emergencies exist can safely and advantageously be lodged in the President, why not let him be the judge of the extent of preparations that are necessary to provide for public defense without the concurrence of the Congress? Why stop at the mere protection or safe-

guarding of property? Is not the protection of life and the defense of the country of greater moment?

Mr. President, during this entire discussion no wholehearted or sincere words of commendation have been expressed for the manner in which thus far the flexible tariff has functioned. Throughout the discussions there has been criticism and an expression of general lack of confidence. Even the proponents of the measure have been apologetic. But in the very breath that they allege that things have not been as they ought to have been and that the results have not been as expected, they urge us to continue the abandonment of our powers, because, forsooth, the future will resuscitate, remodel, and restore the particular example of bureaucracy that thus far has failed. The servant has been unfaithful in some things, so make him ruler over many!

Reform! Drive politics out of a department of government that deals with a question that is saturated with political philosophy fought over in every political conflict by every political party since the beginning of the Nation! Do you think that by delegating this power that a candidate for the Senate can be elected to office in Louisiana by stating that the sugar question has been removed from politics and is in the custody of a mere fact-finding commission, and that the people of Louisiana must appeal not to their Senators for relief but hereafter to a fact-finding board that has already decreed their sugar protection excessive? Do you think any Senator, be he Democrat or Republican, elected in Massachusetts can escape declaring to distressed industries that the tariff is now taken care of by officials outside the Halls of Congress and that he is powerless? What of the Senators from other States? What will you say to a constituent after a fact-finding commission has refused an application for tariff revision? Are Senators from the woolgrowing and from the lumber States going to sit down and fold their hands now that you have passed a law taking this authority in large part from yourselves?

I dislike to prophesy, but a statesman must do it. The founders did it, they looked back and saw the awful story that history revealed and that they had personally experienced, of the usurpation of the power of taxation. And then they prophesied that history would repeat itself here in America unless the control of the people's pocketbook and the control of commerce through the imposing of taxes was separated clearly and absolutely from the Executive and kept on the broadest basis possible. They were not so guileless as we, or shall I say such trucklers to expediency? They were students of the science of government. They were sagacious. Well they knew that lodging power in the hands of one man makes for celerity and efficiency; but they also knew that something else was of vastly more consequence. They were willing to make certain sacrifices of efficiency for greater ends. They preferred less efficiency and the retention of liberty, rather than the maximum of efficiency with the possibility of despotic abuse.

After all is said and done is not the answer to the impression that visitors to these galleries receive, and frequently express, of our apparent inefficiency and other shortcomings summed up succinctly in the words of the French leader when criticism was made of the delay and disorderly conduct of the French Assembly: "These are the manners of liberty."

If there is one idea more than any other that I have been impressed with as I read the stirring story of the deliberations and struggles for the founding of this Republic, and studied the political philosophy of its creators, it has been this—that they were not unmindful of the possibility that the form of government which they outlined might in time bring to their descendants tyranny, but they were convinced first, that if that tyranny came it was more likely to come through abuse of the taxing power than any other, and secondly that it was better to have that abuse come through the failure of many rather than of one. In a word they believed that since abuses could not be foreseen or surely prevented, they were in the long run less likely to come through their parliament than through some of the other agencies of government which they necessarily provided for; and consequently they lodged, first of all the taxing power, permanently, as they thought, in the charge of our parliament—the American Congress.

I said I would venture to prophesy, and here is what I do not hesitate to say, weighing the responsibility of my words, that this decision to make the flexible provisions of this tariff a permanent policy of our Government, for that is what it amounts to, means the end of a scientific judicially minded commission, and it likewise means the end of tariff reviews in the open before the country by the Congress.

The personnel of the United States Tariff Commission, and I say this without any desire to enter into the realm of discussion of personality, since the commission began the administration of the flexible tariff, has become more political. Previous to 1922 it may not have done much, for it was only starting, but what it did was scientific and commanded respect. Men of scientific integrity and purpose were sought and obtained both for commissioners and for leading positions on the staff. With the coming of the flexible tariff the whole complexion of the commission changed, a new type of commissioner was appointed, and the better members of the staff resigned and were replaced by inferior and more subservient assistants. It could not be otherwise. The change in the work was from investigation and research removed from politics to research, investigation, and decision controlled by politics. What has happened is inherent in an institution dealing with such a highly political subject, which is possessed with the power to loosen or bind men's wages and profits through governmental action.

What we did then and what we are doing now, if this proposal succeeds, is to transfer political conniving, scheming, improper suggestions of every kind from this open public forum to a commission that necessarily does its work away from the public eye. Is there any Senator on this floor who seriously doubts that pressure of tremendous proportions will not be exerted with success in naming in the future to this law-altering body textile commissioners, wool commissioners, sugar commissioners, lumber commissioners, and that men will also be appointed as members of the staff for the purpose of protecting and insuring the supposed rights of particular industries and interests?

You say that intrigue, scheming, and conniving is here in the Congress. True; but it is brought to bear on six hundred men and not on six men who are the appointees and advisers of one man! You say that politics in tariff making is here. Yes; but here it is in the open; it is a recognized and expected part, unfortunate and, I fear, unavoidable of the surroundings and functioning of parliamentary government. What an exalted opinion of the immunity from political pressure and subtle suggestions and possession of infallibility you place in bureaus and in the presidential office! How you do look guilelessly for a miracle!

Why are these things here? It is because we are engaged in the business of handing over favors and benefits through the possession of the opportunity and power to grant, in the exercise of our discretion, the demands of selfish and greedy interests. Our necessarily plenary power with respect to taxation gives us the power to abuse it; but there are limits to abuse in our hands. There is none when it is concentrated and out of sight.

Mr. President, there have been some momentous debates and decisions in the Senate of the United States, but none that were fraught with more serious consequences for the future of our country and for the welfare of the people than the decision we are making now. It is more than a fight between old-fashioned constitutionalism and modern constitutionalism, as it has been called. It is a fight to safeguard parliamentary government against the usurpation of the taxing power.

I see in vision a future day when men sitting in our places here will turn back the pages of the record of this body to scan the names and the motives of those who changed the settled policy of one hundred and forty years and turned this most sacred, precious, and dangerous power—that even to destroy property and freedom of action—into an uncharted political course that every liberty seeker familiar with the science and experience of government has hitherto renounced and avoided.

Senators, pause, I plead with you, before you vote for such a destructive interference with the liberties and rights of our people.

Mr. President, I ask to have printed following my remarks an extended and more detailed analysis and argument with respect to the legal and economic aspects of the tariff contained in section 336, prepared by me.

There being no objection, the matter referred to is ordered to be printed in the RECORD, as follows:

SECTION 336—THE FLEXIBLE TARIFF

In the tariff act of 1922 for the first time in our national history several fundamental and revolutionary beginnings of change were made in the law respecting the tariff. One of these dangerous innovations was the incorporation among the administrative sections of the act of what has been popularly called the flexible tariff. Characterizing this provision in general terms, it consists in a serious impairment of the control of the elected Representatives of the people over the power to tax. It constitutes a transference of a fundamental legislative power to the Executive.

Among the more indirect and specific reasons for the change was that put forward by certain idealists who thought that the newly conceived flexible tariff could be used as a device to "get the tariff out of politics." Many citizens of good will are, for obvious reasons, not satisfied with the way the Congress now handles the tariff and tariff problems. The flexible tariff is, from this angle of the reasons for its existence, a

striking example of the great American delusion that we can be saved from long-standing evils by passing a law—that the bad habits of centuries can be cured by a mechanism, or that what is and always has been and always will be a political question and issue can be made otherwise.

But this is not the really important aspect of this subject. What is involved here is nothing less than the question of the preservation unimpaired of the parliamentary power over the public purse, and equally so whether that power is used merely to tax the people or to accomplish another end or for the two combined. The founders of this Government and their predecessors of the Liberal Party in England were most zealous, and wisely so, about the preservation of this power vested in the people's elected representatives and stubbornly opposed its being frittered away in any respect whatever. If the history of political institutions teaches anything, it teaches that this particular power of parliament, and its appropriate powers generally, must be preserved if free government itself is to continue. The central legislative body of any nation must be maintained in the full integrity of its powers—even during eras when it functions badly—for in the long run there is no other bulwark of ordered liberty or defense against tyranny. In the long course of events any sort of fascism or bestowing of legislative power upon a single man, or a single man and his personal agents and advisers, is certain to bring disappointment and even disaster.

Now, what is the flexible tariff in the form in which it was enacted in section 315 of the tariff act of 1922? First and foremost—in its legal aspect—it is a power conferred upon the President, with certain limitations, to revise the tariff duties enacted by Congress, such revisions to be based upon ascertained differences in costs of production here and abroad. One of the principal limitations upon the President is that he can not reduce the statutory rates of duty more than 50 per cent nor increase them, in general, more than 50 per cent. In the case of certain exceptions he may not raise the rate of duty at all, but by shifting the basis of valuation he may increase the amount of duty collected in unlimited excess above 50 per cent. The other chief limitation upon the power conferred upon the President is that he can not exercise it until after an investigation has been made by the Tariff Commission.

With respect to this required participation of the Tariff Commission there are a number of limitations of an administrative character—directions as to the method of conducting investigations which will afford the basis, or the chief basis, of the presidential action. Costs of production in general, both domestic and foreign, are to be found for "like or similar articles"; and as regards foreign costs alone, they are to be the costs not of the whole world averaged together but the costs of the industry producing the article in the "principal competing country." Not much guidance is afforded by the statute as to what elements should or should not be included in costs of production; and nothing is said as to how the costs of the various establishments of a whole industry shall be averaged (and there are different statistical methods of averaging) so as to afford a representative picture. Neither is anything said that affords guidance as to the time of the investigations—as to what period should be taken or how long a period. This omission is of particular importance in connection with investigations of the costs of production for most agricultural commodities; anything less than a 3-year cost-finding period, and that well chosen, will yield inconclusive results. All these omitted instructions and ambiguous instructions (and all those that are given are more ambiguous than they seem to a layman) are of vital significance in passing upon the question as to whether the flexible tariff was a legal conferring of power upon the President or as to whether or not it was an unconstitutional delegation of legislative discretion. This question turns, of course, precisely on whether the President (and the Tariff Commission aiding him) were given a definite rule to follow. To pursue this aspect of the subject further would lead to a discussion of the recent decision of the Supreme Court (Hampton *v.* the United States) which upheld the constitutionality of the flexible tariff of the act of 1922; and that is beside my purpose.

I wish now to observe that the actual indefiniteness and uncertainties of the statute are among the chief reasons why the Tariff Commission has functioned so slowly under section 315, and has to date completed only some half hundred investigations and reported the results to the President. Any expectations that some may have entertained that this provision of the tariff act of 1922 could be used as an emergency measure to make necessary tariff adjustments "during periods when it is impossible to summon Congress in order to meet a crisis or acute situation," have been disappointed. For reasons largely beyond its control the average investigation of the Tariff Commission under the existing flexible tariff has taken something like from two and a half to three years. Almost all the completed investigations, by the way, when acted upon by the President at all, have resulted in tariff increases. At the end I shall have something to say about the provision in our tariff legislation of suitable means for meeting emergencies. Considering that aspect of the matter the flexible tariff of 1922 has been a total failure; the danger either passes or the American industry is ruined long before one of these necessarily long-drawn-out, formal, and detailed investigations can be made.

One other feature of flexible-tariff history may be mentioned here. At first certain industrial proponents of high protection were decidedly suspicious and hostile. They feared constant disturbances through the operation of the flexible tariff, and the possibility of many rate reductions. Eventually their fears were dispelled, and now they are enthusiastic for it. They now see great possibilities in it in the way of interim increases of rates. In fact, some of them with unguarded candor have said that there are two ways of getting rates of duty increased—one through the Congress and one through the Tariff Commission with activating proclamation issued by the President. But not all the industrial interests favor this departure; they have appreciated the possibilities of overreaching protection, that would eventually bring disturbance and injury. It is to be noted that many of the large industries have never invoked this method of obtaining tariff increases.

The inherent impropriety—whatever the Supreme Court may say with respect to the technical legalities—of the flexible tariff—any flexible tariff worked through power conferred upon the President assisted by the Tariff Commission—is brought out by noting the constant shuffling back and forth by its proponents as to what its form shall be; that is, what its basis shall be. When first formulated by the majority party of the Senate eight years ago it was a scheme to equalize "conditions in competition." After debate emphasizing the indefiniteness of the rule, and its consequent almost certain unconstitutionality, a plan of equalizing "costs of production" was substituted for it. Now, in the present provision for reenactment of a flexible tariff the equalizing of conditions of competition is again proposed as the rule to be applied; such proposal of the House being accepted by the majority of the Committee on Finance. Within a few days, however, the leaders of the majority have stated on the floor of the Senate that they are going to drop conditions of competition once more and again make use of the rule of equalizing differences in costs of production. Only Friday of last week the chairman of the Committee on Finance assured the Senate that so far as he and his colleagues on the conference committee were concerned, this decision was final; they would not attempt to reintroduce a rule of equalizing conditions of competition in the conference.

Now, why this backing and filling, both eight years ago and now? It is because certain proponents of high protection are not satisfied with the rule of equalizing the costs of production; it is for that reason they continually try to get away from it to the rule of equalizing conditions of competition which would more adequately serve their purpose. Equalizing conditions of competition is plainly unconstitutional, and therefore they are forced repeatedly to reconsider it and take up with the next best thing. Why is it that comparative costs of production is the next best thing? Why is it that it does not give full satisfaction? It is in a word because very many of the tariff rates subject to revision by the President under the flexible tariff are not related, or at any rate not closely related, to costs of production; and therefore revisions of tariff duties under the rule of comparing costs of production will result, or might result according to what applications for revisions are asked for and how the investigations are made, in many reductions of the statutory rates of duty.

I will give but two proofs of my assertion. Obviously the difference in costs of production here and abroad is not the principle followed by the Congress with respect to a number of commodities given one common rate of duty in any paragraph. I refer not to commodities like chemicals, which are often but mere minor variations one from another, but commodities that are decidedly different with respect to method of manufacture, the nature of their construction, their price, and their use. Also commodities differing as regards volume of demand, and the scale of production and the economies of production applicable to them. Obviously when ten or more such commodities, made perhaps from the same material, are lumped together with a common duty in one paragraph, the Congress could not have paid much attention to costs of production. In fact, it is logically impossible to have based the common duty on the costs of production in severalty of such an array of commodities, whose unascertained costs are clearly wide apart. The Congress intended to give a certain general protection to these commodities of, say, 50 per cent ad valorem, and costs of production really had nothing to do with it. When, therefore, the President, acting under a flexible tariff, worked upon the basis of a minute inquiry into costs of production by the Tariff Commission, makes a revision of the rate for any particular commodity, the outcome may be a reduction of the duty from 50 to 25 per cent, or there may be an increase of the duty perhaps 75 per cent.

The second proof of my general contention that, notwithstanding the claim that tariff rates are based at least in a general way upon differences in costs of production, the fact is that costs of production have little direct connection with the amount of the rates is afforded by considering the paragraphs—often including only a single commodity—where Canada is known to be the principal competing country. The rates on Canadian products are frequently very high rates, and yet everybody is aware that it costs, as a rule, only slightly less, if any, to produce a comparable article in Canada than it costs in this country. It costs about as much to run a woodworking establishment in Canada and get out 1,000 feet of some wood product as it does here. The unit costs of production of a Canadian flour mill are about the same as they are here. With respect to all manufacturing establishments on

the Canadian side of the line, as a rule whatever elements of cost are cheaper are apt to be offset in large part by other elements of cost that are dearer.

As for agricultural products, the costs in Canada, taking comparable products and comparable and representative costing periods, are about the same as our own. Why should it cost more to raise a bushel of potatoes in New Brunswick (except that the value of the land is less in New Brunswick by reason of the potato growers of that Province being required to surmount a tariff barrier in entering the market of the United States) than it costs under like climatic and social conditions near by in Maine? There is no gainsaying that the duties on Canadian farm products are set in the tariff act at certain amounts to afford a certain general protection; and a revision of those rates upon the basis of the ascertained difference in unit costs of production would very frequently result in reduction of the statutory rates of duty.

What I have just said all come to this: That in the very first clause of the very first sentence of the provision for a flexible tariff, as given in the bill before us, there is either a great misconception or a great humbug. The flexible-tariff provision starts off this way: "In order to put into force and effect the policy of Congress by this act intended," and so forth. There is no one policy of Congress with respect to tariff rates, "by this act intended." There is only a general purpose of affording protection, and affording it in different amounts according as it seems expedient to the Congress, taking into consideration more or less (among the many factors that it may deem necessary to consider) the particular factor of differences, if any, in costs of production. All the factors considered by the Congress are given different weights; frequently costs of production is given almost no weight whatever.

As stated above, extreme protectionists at all times would much prefer, for reasons now apparent, a flexible tariff based upon differences in competition—which rule could be applied liberally, from their point of view, to get what they want and avoid getting what they do not want. Regretfully they accept as a second choice the method of a flexible tariff based, ostensibly at least, upon the rule of equalizing the difference in costs of production; and then it becomes their task to inject into costs of production factors that are not costs of production at all but something else, and so they secure in effect a rule largely based on other elements of competition than differences in costs of production. This is chiefly accomplished by dragging in costs of transportation. Eight years ago the question of the inclusion of costs of transportation with or among costs of production, in defining the basis of a flexible tariff, was definitely raised, and it was decided that they should not be included. When final action upon the flexible-tariff provision of the act of 1922 was before the Senate there was an extended debate upon this subject, in which the chairman of the Finance Committee and Senators Lenroot, Gooding, and Walsh of Montana especially participated. One especially pertinent fact emphasized in this debate was that the matter of costs of transportation, as connected with the tariff, can not by its very nature be handled by a rule. There is no leading economic principle that can be used—no generally applicable principle of law or logic. Therefore, it was said, you set an impossible task for the President if he is to deal with transportation and act as an executive solely, and avoid legislating. The Congress can consider this matter and act or not act as it sees fit, because it is the Legislature; the Congress has sovereign power within the limits of the Constitution and does not have to be logical.

The Senate eight years ago left out transportation from costs of production as related to a flexible tariff among other reasons because it was well known that there are many legal precedents (the E. C. Knight case, for example) that draw a sharp distinction between production and commerce. Both business men and the courts regard an article as produced when it is fully fabricated and ready for sale and a value can be placed on it. At that point production ceases and trading, trafficking, transportation—in short, commerce—begins. The second reason was that the Congress was well aware eight years ago that from its very nature there can be no averaging of transportation costs in the same way as there can be an averaging of production costs. And furthermore they were aware that whereas a customs duty must for constitutional reasons be unitary, transportation rates and transportation conditions are multiple. Therefore any relating of costs of transportation to customs duties, either in their original statutory form or in a revised form given them by the President and the Tariff Commission, is, as already indicated, essentially a matter of the exercise of legislative discretion.

Although the Congress attempted in 1922 to avoid enacting an unconstitutional flexible tariff by excluding costs of transportation, there was nevertheless an unfortunate loophole by which eventually it was brought in in the carrying out of the statute. In subdivision (c) of section 315 there was the statement that the President might take into consideration "other advantages or disadvantages in competition"—a hold-over from the first draft of the flexible-tariff provision when it was all conditions of competition. Soon after the President and the Tariff Commission began to function under section 315 it was held by some commissioners that subdivision (c) meant, or covered, costs of transportation—a view that was not shared by other commissioners. Eventually the contention was settled by an opinion of the Attorney General, now of some years standing, under which (largely through misinterpretation) costs of transportation have been included with, or combined with, the statement of ascertained differences in "actual costs of production at the places of production" as found by the investigations of the commission and reported to the President. In the end the Attorney General, for the reason indicated, and not the Congress, made the law respecting this matter.

This opinion of the Attorney General has apparently completely numbed the critical faculties of the leaders of the majority in the present Senate, for now, completely reversing what the Congress did eight years ago, they have brought costs of transportation in by the reorganized flexible tariff of section 336 flat-footedly. It is just as unconstitutional now as it was eight years ago, because it is just as much a matter of legislative discretion now as it was eight years ago. The bill before the Senate should at least be amended if we are to have a flexible provision at all so as to expressly exclude costs of transportation from the factors taken into consideration by the President or anybody in connection with the administration of the statute. Except, indeed, that it may be placed in a report to be "considered" as a side-light factor by the President in determining what ought to be done, in all the circumstances of importation or lack of importation of a commodity under the existing duty, and after consideration of the ascertained difference in actual costs of production separately determined, stated, and compared.

But although there is a color of right in a rule for the flexible tariff confined to "actual costs of production at the places of production," it is nevertheless only a color of right. Looking beyond words and the implications of words—with which almost exclusively the Supreme Court seems to have been concerned in reaching its recent decision—to the actual methods employed in working the flexible tariff, it should be clear to any thinking person that this is in fact a dangerous and unprecedented farming out of one of the most important powers of Congress—the power to tax—and equally so whether the power is used primarily for raising revenue or primarily for affording protection to American industry. At the beginning of these remarks I used the expression advisedly, "revolutionary beginnings of change." The fact that not much has yet been done of harmful consequence under the flexible tariff during the past eight years should not lull people into a feeling of false security in case the flexible tariff be reenacted and continued. It is an institution that will certainly lend itself to abuse. The Tariff Commission will surely become continually more and more a center of intrigue—intrigue bringing its pressure to bear upon six men rather than approximately six hundred men, the elected representatives of the people. Unless this generation of men in America has lost all the political sagacity of their forefathers, they will, in Edmund Burke's phrase—I quote from memory—"Scent danger from afar and judge the evil of a measure by the evil of the principle," and not by what has happened to be done so far under it.

The flexible tariff—any flexible tariff worked through a commission aiding the President—is calculated by its very nature to make for discord and confusion among those who administer it. And, furthermore, there is certain to be the attempt made at least to bring the power of suggestion to bear upon the commission. Already in the past lobbyists have flocked to the commission, and, in all probability, what has happened in the green bush is no circumstance to what will happen in dry. The President himself may undertake to be lobbyist in chief to the commission and to influence its action; and this may be accomplished in a number of ways. A recent incumbent of the presidential office went about it by direct pressure brought to bear in one way or another upon the commissioners. The present President seems to be proceeding differently. What any President will naturally want is that the commission should have an apparent independence and serve as a highly convenient screen behind which he can operate and avoid taking obvious personal responsibility; that is, that it shall be a screen to shield him from criticism when he gets out his proclamation after an investigation by the commission, provided the investigation is made to his liking. In the Minneapolis Journal under date of June 16, 1929, there is a news item from the Washington bureau of the Journal, evidently inspired, apropos of the recent appointment of a new chief economist to the Tariff Commission, who, it is correctly stated, "occupies a place second only to the commission itself." The administration, according to this news item, takes great pride in having secured the appointment of this "key man" of the staff of the commission. The news item goes on to state, what is a fact, that the new appointee "as chief economist for the Tariff Commission will be chairman of the commission's advisory board, and as such will be in direct charge of all tariff-rate investigations the board will undertake"; that is, investigations ordered by the commission, but planned and executed by the board. It is correct what this news item further says that "in fact in some respects the chief economist may become an influence in shaping tariff rates that will be even greater than that of the commission." Senators may draw their own conclusions from these statements.

Notwithstanding that the flexible tariff gets the Tariff Commission into politics, and will ultimately ruin it unless all experience of the past goes for onthing, there are still sanguine and optimistic souls who say: "Let us not be discouraged, but push on to develop this institution—

some way must be found to take the tariff out of politics; and the Tariff Commission, working a flexible tariff along with the President, is the most promising way that can be suggested." Those who take this view are prone to overlook the part that the President takes under the existing and proposed flexible tariff and to magnify the at least potential importance of the commission. They say, "Let us seek through good and evil repute to build up the Tariff Commission into a body of permanency and dignity and influence similar to the Interstate Commerce Commission." Then, it is maintained, the Congress can be rid of a burden which because of its infinite detail and for other reasons is too much for it. This idea has been frequently advanced of recent years, and should be examined with care and rejected once for all, for it is a mistaken idea. There is no help for it but to find some way of strengthening the Congress itself with respect to its dealing with and controlling the tariff.

There is really only a superficial resemblance between the Tariff Commission and the Interstate Commerce Commission, in that both were created to be servants of Congress, and as such both are outside the general scheme of Executive, departmental organizations. The similarity stops there, however, by reason of the difference in the subject matter with which they deal and their totally different legal status. Nothing that the Tariff Commission may do is justiciable in the courts; what the Interstate Commerce Commission does, is justiciable. The Tariff Commission deals characteristically with customs duties (or things related to customs duties); the Interstate Commerce Commission *deals characteristically* though not exclusively with railroad rates. Now, customs duties come into existence through the exercise of the sovereign power of the Government to levy taxes; railroad rates, in contrast, come into existence (or did historically) through private corporations establishing charges for the use of property and for rendering a service. Because such charges made by toll owners or by common carriers are "affected with a public interest" they may be regulated by the legislature; and it is a perfectly good observance of the principle of due process of law for the legislature to delegate the details of such regulation to a deputy—to a public service commission, or whatever it may be called. But whether such power of regulation is directly executed by the legislature or is delegated, in either case the power is exercised under the law—what is done must be reasonable and in the public interest and not result in an indirect confiscation of private property. Hence, when the Interstate Commerce Commission proceeds to exercise the authority conferred upon it, to systematize and regulate the rates of railroads engaged in interstate commerce, those affected by its determinations may have and do have their day in court.

Can anybody protest in court what the Tariff Commission does or might do with respect to systematizing and revising—that is, regulating—customs duties? Certainly not; it is absolutely out of the question. The right of the sovereign to tax is what it deals with; and that can not be challenged in the courts. The right to tax is a right that can be used even "to destroy," and that without legal remedy by the citizen; and therefore the citizen sagaciously keeps that power under the control of a large body of his directly chosen representatives. Many centuries of political and legal history of one sort lie behind customs duties and other taxes; something like two centuries of economic and legal history of a wholly different character lie behind railroad rates. There is nothing in it; this idea that somehow, by a mechanism, politics can be gotten out of the tariff and the Tariff Commission can be built up into an institution similar to the Interstate Commerce Commission. It is far too late in the governmental history of the English-speaking race in general, and in the tariff history of the United States in particular. Above all questions the power of taxation, including the tariff, is and must be political.

Furthermore, in considering this question of a possible beneficial extraparliamentary control of matters of tariff taxation in connection with a flexible tariff—and that is the specific subject now before us—it must not be overlooked that the power of the flexible tariff of the existing statute, and of its proposed reconstruction, is a power conferred upon the President, not upon the commission. Under its original powers of the instituting act of 1916, the commission was to aid the Congress by furnishing information connected with the tariff in general; under section 315 of the existing law, or section 336 of the bill before us, the commission aids the President in his task of revising rates. That, again, is another reason why the acts of the commission can not be challenged in the courts, and accounts for the fact that the commission itself receives its law not from the courts but from the Attorney General. From time to time the President asks the Attorney General about the legality of what he is doing under the flexible tariff, and the answer of the Attorney General—so far as it applies—governs what sort of investigations the commission makes in the future as the assistant of the President. Does the Interstate Commerce Commission take its law from the Attorney General? Certainly not; everybody knows that it does not. In short, in respect to the essence of the matter now before the Senate, there is no parallel whatever between the Interstate Commerce Commission and the Tariff Commission. This well-meaning suggestion, made by some people that ought to know that it is useless, fails us. And, accordingly, we shall have to continue our search for some other means for getting the tariff out of politics—or rather for getting something else besides politics into the tariff. And in that quest there is only one road to travel, and that is to bring about by education a higher level of morality and intelligence of the American people with respect to the tariff. Then everything desirable will follow without resorting to mechanisms and devices of dubious legality and improbable usefulness.

The presidential flexible tariff, as we have it in existing law and as it is proposed in the House bill amended by the Finance Committee, should be brought to an end right here and now. But something may be substituted in its place that will be legal and useful. There is considerable public demand—I have received it from my own constituents—that provision be made for a speedy adjustment of particular tariff rates to meet circumstances of exigency—to provide increases or decreases of the tariff whenever unexpected circumstances affect adversely some branch of Amerian industry, large or small. It is not always expedient to await a general tariff revision by the Congress in such cases of unexpected economic shifts. To provide for such circumstances of tariff exigency I shall offer in due time a formal amendment. It will be of the general character of devising a limited but real emergency power.

To sum up all I have said, I am opposed to delegating the taxation power to the executive branch of the Government, and I favor preserving the flexible provisions in another form for the purpose of providing investigations and action in emergencies, between general revisions of the tariff by Congress, by providing for special action by the Congress when the President considers a tariff-relief emergency exists.

Finally, above all that has been said hitherto, it must never be forgotten that the exercise of the taxing power in any form in any branch of Government is a matter that deeply concerns the citizen in his own private affairs. For that reason many of the revolutions of the world have started precisely in resistance to acts of government with respect to taxation. Therefore the complete fallacy of the notion that the device of a flexible tariff can, in the United States, take the tariff out of politics—take out of politics something that is and must be constantly political and watched and controlled as such.

Whatever the shortcomings of the flexible tariff have been thus far, by reason of the unfavorable auspices under which it has been carried out, such impediments to its success are inherent and can not be changed. Is it possible for the Tariff Commission, however composed with respect to its personnel, to be as an institution dealing with the tariff substantially different than it has been? Can the Tariff Commission be conceived of as operating in an ivory tower and that the taxpayers and tariff beneficiaries will leave it alone? No; it is inconceivable. The more it, and the statute it administers, is changed, the more it will be the same thing; and that means that in the handling of the tariff sinister influences will have the situation concentrated and the maximum of opportunity. All experience proves this to be the ultimate result of the removal of the exercise of the taxing power from the immediate and direct control of the elected representatives of the people.

Mr. BLAINE. Mr. President, when we appreciate the fact that the proceeds of the dairy industry in the United States are, in round numbers, $3,000,000,000, nearly three times as much as that of wheat, nearly two times as much as that of corn, constituting 14 per cent of the total human food value, we then appreciate that the dairy industry is one of the most extensive in the United States.

I am going to discuss the Tariff Commission operating under the flexible provision in relation to the dairy industry. I shall make no effort to discuss the technical or theoretical operations of the flexible provision. I shall, as best I can, discuss in a practical way the relation of this new scheme of government toward this most vital industry. Environment leads me to this discussion. My own State is most vitally interested in the industry, for it produces one-ninth of the entire milk produced in the United States. It has one-tenth of all the dairy cows in the United States. It stands third in the production of butter, Minnesota and Iowa exceeding our production. Out of the entire 18,000,000 pounds of Swiss cheese produced in America my State produces nearly 15,000,000 pounds. Therefore it seems entirely appropriate that I should turn my attention to a discussion of the Tariff Commission in its administration of the flexible provision as it affects the dairy industry.

The senior Senator from Kentucky [Mr. SACKETT] on last Friday said:

> But there are rapid changes, even in agriculture. We went through such changes a year or two ago, at the time when the Canadian dairies commenced to ship their butter or their cream into this country so rapidly, and when the effect was felt not alone along the border but the reflex of that movement reached back into the central part of the country, and the farms which formerly were given over to dairying had to be changed into other production. Then came the change in the tariff; and to-day in the central part of the country, which I know best, the dairies are increasing on every hand.

He said further:

However the flexible provision may have worked in the past, it is a safeguard not only to the labor in the factories but to the farmer upon the farm. It takes care of a rapid movement which may take place in the production of any particular article and gives the producer an assurance that in spite of any changes that may take place he is in a position to go to headquarters, where the condition can be promptly relieved.

I am sorry the Senator from Kentucky is absent this afternoon. Such expressions as I have quoted can come only from the imagination, as I shall undertake to demonstrate from the record.

Likewise the Senator from Pennsylvania [Mr. REED] on this afternoon, in a very keen discussion of the problem, with a great deal of emphasis undertook to describe the usefulness of the flexible-tariff provision as it relates to agriculture. He dwelt at some length upon maraschino cherries, those cherries that once decorated the dinner table in the sparkling concoction which the Senator from Iowa [Mr. BROOKHART] observed on a more recent occasion. Then the maraschino cherry has another very important use. It becomes the embellishment upon the apex of one's ice cream. The entire production of maraschino cherries in the whole United States, according to the latest information that we have, is the astounding and enormous sum of $2,100,000. The Senator from Pennsylvania dwelt long and seriously upon the great importance to agriculture of the Tariff Commission having recommended an increase in the tariff on maraschino cherries, sulphurated or in brine. The entire benefit that flows to the horticulturist who grows the cherries, if he received the entire benefit of 1 cent per pound increase, would be the enormous sum of $150,000. I think the Senator from Pennsylvania declared that that alone was justification for the existence of the Tariff Commission. We produce about 15,000,000 pounds a year of maraschino cherries.

But when he got to the question of dairy products the Senator from Pennsylvania glossed over that industry with the broad, bold statement that the benefits which flow to that industry through the action of the Tariff Commission justified its existence and justified a continuance of the flexible provision under the administration of that commission; and yet he did not state a single fact. He referred in general terms in one sweeping paragraph to butter, milk, cream, and Swiss cheese, and upon his own statement declared the great benefits flowed to the dairy industry because of the flexible provision of the law. I am quite willing to entertain a statement of fact made by the Senator from Pennsylvania, but I am unwilling to accept his statement without specifications. The reason why he did not specify the benefits that come to the dairy industry was because the record contains no evidence of any benefit flowing to the dairy industry from such a source, not in one single item. I shall review just briefly every single item to which the Tariff Commission has given consideration as affecting that industry.

In the first place, the Tariff Commission has not acted with promptness. I observe that in the consideration of a revision of the tariff on maraschino cherries they were engaged seven months and seven days in perfecting the proposed change. When it came to the question of a change in the tariff rate on milk and cream, involving millions upon millions of dollars, it took the Tariff Commission and the President 38 months. Yet the Senator from Pennsylvania [Mr. REED] and the senior Senator from Kentucky [Mr. SACKETT] would have us believe that the Tariff Commission's action on maraschino cherries was of vast importance to the agricultural interests; but there was not a single word from them, not a single fact stated to justify even the existence of the Tariff Commission so far as its actions are concerned in relation to the dairy industry.

When it came to the investigation of the tariff on Swiss cheese it took the Tariff Commission 34 months to perfect that investigation, including the time required by the President for his proclamation. When it came to the question of casein, a product of the dairy industry, that problem was before the commission for 35 months. In the face of this record the senior Senator from Kentucky [Mr. SACKETT] declares that the Tariff Commission is a necessary institution so that situations involving emergencies may be promptly relieved.

Mr. President, I am not going to enter upon any criticism of the Tariff Commission, but I am going to enter upon a discussion of the futility of the Tariff Commission as an administrative body under the present law. Let me portray briefly the conditions created by the World War that existed in the dairy industry. There was a great demand for the essential products of dairies, which began in 1918. There was a constant acceleration of that demand during the World War, with the result that there was a feverish effort made by men engaged in dairying to increase the products of that industry. That feverishness existed not only in America but everywhere. Japan, in the years from 1920 to 1923 or 1924, purchased from America hundreds of thousands of dollars' worth of dairy cattle. The Republic of Mexico sent to one bank in one county in my State $80,000 in gold with which to buy dairy cattle. The Government at Bogota imported dairy cattle from the United States.

There was a great competition between America and Canada. The prices of dairy cattle went skyward. Breeders in the United States were paying $100,000 for a single animal. They were going to Canada and paying as high as $10,000 to $30,000 for a single milch cow. That situation was reflected back to every dairy farm in America. It appeared to the dairymen that there was going to be a veritable Eldorado, with the result that the productive dairy cows in the United States reached the enormous number of 24,000,000 head. This stimulation of the industry led Australia, the United Kingdom, and Canada to the exportation of dairy products, principally butter.

This situation in America wherever dairying is possible brought about a keen emergency. That emergency was expressed by the Senate of the United States in 1924 when this body adopted a resolution, introduced by the then Senator Johnson, of Minnesota, asking for an investigation of this one product of dairying. Members of the other House, Mr. Kvale, of Minnesota, Mr. Browne and Mr. Beck, from my own State, and one of the largest cooperative creamery associations in the United States, filed complaints with the Tariff Commission. An emergency existed. The importations of butter had been increasing tremendously, and those men, this great cooperative creamery association, and this body recognized that emergency.

What happened? The petition was filed in March, 1924; the investigation was ordered July 9, 1924; the report was made by the Tariff Commission to the President on February 5, 1926; the President's proclamation was issued March 6, effective April 5, 1926. The emergency had passed, the situation that confronted the dairymen of America no longer existed; whatever order the President would make in 1926 would be entirely futile. Anyone who was familiar with the conditions in the dairy industry in 1926 knew full well that any action taken at that time would prove worthless to the dairy interests. Yet Senators declare that the Tariff Commission affords a prompt method of relief.

Here was an emergency that was recognized officially by those connected with the industry and by this body, and yet what hapened? Were the farmers benefited by the action of the President in increasing the duty from 8 cents a pound to 12 cents a pound? Not at all; not one single solitary penny. The fact is that in 1918 the average wholesale price of butter in the Chicago market was 50 cents a pound for 92—score butter—for which the farmer received 48 cents a pound. In 1919 it was 58 cents a pound; in 1920 the wholesale price in Chicago, the central market for the dairying States, was 58 cents a pound, the price to the farmer being 2 cents a pound less. Then the 1922 law went into effect, and in 1923 the wholesale price of the same score was 46 cents a pound, and in 1926, after the 4 cents a pound increase was made, the price of butter dropped to 43 cents a pound in the Chicago market, or 15 cents a pound less than in 1920. Thus appears the futility, the utter worthlessness of the Tariff Commission's report and the proclamation of the President of the United States.

Now let us go a step further in this matter. The Tariff Commission had made an investigation of this problem in 1921. They had investigated butter, cheese, milk, and cream, and issued a report thereon. If the Tariff Commission was to have served the dairy farmers of this country they could have done so by using information contained in their report of 1921 in investigating the complaint filed in 1924 and rendered a decision within as short a time as they rendered it on cherries.

The report in 1921 in my opinion—and I have read it all—is far superior as an informative document and as an analysis of the entire situation than is the report which they made to the President in 1926. That record disputes the statement of the Senator from Pennsylvania when he said that internal dissension back in 1921 made it impossible for the Tariff Commission to function. The fact is that the paralyzing hand of politics had not been placed upon the Tariff Commission in 1921. So much for butter. I am convinced that any Senator who will review the record as to that commodity must come to the conclusion that the commission as presently organized and presently operated is a futile and useless organization.

As to the other products of dairying, milk and cream, a petition for an investigation was filed prior to March 4, 1926, and upon that date an investigation was ordered. That investigation was pending in the commission 34 months. The total time required by the commission and the President was 38 months; and as the result of that report the President issued a proclamation increasing the tariff rates 50 per cent on each of the

items, milk and cream. Those were the items to which the senior Senator from Kentucky [Mr. SACKETT] referred when he said that the influence of the action of the Tariff Commission and the President was reflected back into the country, and creameries began to develop everywhere. The record discloses that, instead of creameries growing in number, the actual number is being reduced.

The tariff increase on milk and cream did not yield one single dollar of benefit to the man who milks the cows. The entire benefit, if any, went to the milk distributors who milk the farmers—every single dollar. The price of milk and cream to the farmer, as far as I can ascertain from the record, was not reflected back to the man upon the farm. If that action of the commission and the President had any effect at all, it was to increase the cost of milk and cream to the people of the industrial East, Boston and New York and other of the large centers; and I challenge anyone to produce a single fact showing that the farmer received any benefits whatever. The fact is that milk and cream have had a variable range of prices; but to-day that increase in the tariff does not mean a single additional dollar to the dairyman.

Another dairy product, Swiss cheese: I am competent to give some personal testimony on that, my State producing nearly all of the Swiss cheese manufactured in the United States. Let us see how promptly the commission acted.

The investigation was ordered August 9, 1924. The President's statement was issued June 8, 1927. It took 34 months to make that investigation and initiate the proclamation, raising the tariff from 5 cents a pound but not less than 25 per cent ad valorem to 7½ cents a pound but not less than 37½ per cent ad valorem—an increase of 50 per cent. How do you suppose that increase in the tariff affected the dairymen producing milk for the manufacture of Swiss cheese? I will take the commission's statement upon that.

In discussing competitive conditions they declared that the cost of production of Swiss cheese in the United States and in Switzerland, practically the only competing country, showed that the domestic product delivered in the New York market cost approximately 13 cents per pound more than the imported article. Further, during the first six months of 1927, previous to the change in the duty, the average wholesale price of imported Swiss cheese in New York was 41 cents a pound, or 6 cents above the average price of the highest domestic grade. In other words, the foreign importation was bringing 6 cents a pound more than Swiss cheese produced in America that cost 13 cents a pound more in its manufacturing process.

In the last six months of 1927 the average wholesale price of imported Swiss cheese was 47 cents, or 10 cents above the domestic market. The average wholesale price of the imports in the New York market during the first six months of 1928 was 47 cents, as compared with only 39 cents for the domestic market.

The importations of Swiss cheese under the increased duties have been maintained.

That paragraph is quoted from the report of the Tariff Commission.

How perfectly futile, therefore, has been the investigation of the Tariff Commission and the proclamation of the President! But the defenders of the flexible tariff have proclaimed that it has resulted in great benefit to the dairy farmer in the production of his Swiss cheese. From whence does that great benefit flow, in the face of this record?

There are reasons why the domestic cheese does not bring the price of imported Swiss cheese. I need not discuss that problem, because it has nothing to do with the question of the flexible tariff or the rates.

Another item that relates to the dairy interests is mill feeds, bran, and middlings.

The investigation was ordered in November, 1923. The President's proclamation was made on March 7, 1924, and became effective March 6, 1924. It decreased the tariff on mill feed and bran and middlings and similar products from 15 cents to 7½ cents.

It may be argued that the decrease in the tariff on bran and middlings was detrimental to the wheat growers of America, especially if the argument of those who support the flexible tariff is sound. At any rate, the reduction in the tariff on that dairy feed has been of no benefit to the dairymen of the Northeast and New England States. It is not reflected back into the central portion of the United States, nor into that section of the United States south of the Ohio River where dairying is becoming an important industry. The only possible effect it could have would be upon the cost of dairy feeds in the Northeast and New England States. Let us see what effect it would have.

Bran in Minneapolis sold during the year 1927 at a wholesale average price of $23.75 a ton. In Toronto, the central point from which the Northeastern States and New England States receive their bran, it was $31.54 a ton. The average annual wholesale price of middlings in Minneapolis in 1927 was $24.25 a ton. In Toronto the same character of feed was $40.65. Remove the entire tariff, and the only difference that enters into the cost of feed is the transportation differential, plus the increased price received by the Canadian wheat grower.

Clearly, that act of the commission and the President was futile. It would have been futile had the tariff tax, perhaps, been raised; but at any rate, so far as the record is concerned, that item directly related to the dairy industry does not justify the existence of the Tariff Commission for a single day.

Let us turn to another item relating to the dairy industry, and that would include all of the dairy items which have been referred to the Tariff Commission. That is casein.

The application for an increase of duty on casein was made on March 27, 1923. The Tariff Commission reported to the President on March 4, 1926. The application was pending before the commission for 35 months. The commission found that the increased duties were not justified. The commission's findings were accepted by the President. It took 35 months of investigation to deny the dairy men of this country adequate protection on casein. That item involved an emergency. The Tariff Commission either had been misled in relation to the possibility of casein production in the United States or it had failed to make the investigation it ought to have made. Casein is a by-product in the dairy industry. Speaking outside of scientific terms, casein is cottage cheese, properly pressed, dried, and ground. That is, it comes from the curd or skimmed milk under a process similar to that by which cottage cheese is obtained.

The consumption of casein in the United States is constantly growing. Importations are 60 per cent of that consumption, or 24,000,000 pounds. The domestic production is only 18,000,000 pounds.

Mr. BROOKHART. Mr. President——

The PRESIDING OFFICER (Mr. HASTINGS in the chair). Does the Senator from Wisconsin yield to the Senator from Iowa?

Mr. BLAINE. I yield.

Mr. BROOKHART. Under that state of facts the tariff rate on casein would be effective. Perhaps that is the reason why the Tariff Commission denied it.

Mr. BLAINE. I do not know their reason. I can only say to the Senator that I did not sit in conference with any member of the Tariff Commission to ascertain what formula they were using in determining the cost of production. I have not conferred with any of the Tariff Commission. I do not know what their mental processes may be or what their motives or purposes may be.

Mr. BROOKHART. Is it not substantially true that none of these rates have been effective?

Mr. BLAINE. A proper rate on casein, in my opinion, would be effective. I am going to discuss that.

Mr. BROOKHART. On these other commodities the rates were not, in fact.

Mr. BLAINE. The action was just futile; that is all. It did not do any harm, and it did not do any good.

Mr. BROOKHART. I think that is correct.

Mr. KEAN. Mr. President, did not the action of the Tariff Commission prevent the importation of large amounts of Danish butter?

Mr. BLAINE. Of course, it does not concern the dairymen whether it prevented or increased the importation of Danish butter, unless the benefits were reflected back to the man who milked the cow.

Mr. BROOKHART. Mr. President, I think I have an analysis of that which shows that the increases of rates made no difference whatever.

Mr. BLAINE. Mr. President, I am not discussing the merits or demerits of the tariff rates. I am undertaking to show how futile and how useless have been the investigations of the Tariff Commission.

Coming to the matter of casein again, I am not going to discuss what the rate should be, whether it should be increased or lowered, but I want to point out that the Tariff Commission has not made an investigation that would justify their conclusions, and that the act of the Tariff Commission as to casein does not justify the continuance of the Tariff Commission.

The casein production in the United States, as I said, is not very great; the consumption is only 42,000,000 pounds, but it is becoming an important factor. There has been a considerable increase in the production in many of the States of the Union from 1922 to 1927. In New York the production has increased 3½ times; in Minnesota, 5½ times; in Vermont, 3 times; in the

State of California, 1¾ times; and in my own State, Wisconsin, 6 times.

The Tariff Commission undertook to determine this question upon an entire misconception of the industry. It has been presumed generally, I think, due to lack of information, that casein is produced from that surplus of skimmed milk which comes from those who are engaged in the distribution of whole milk. To a large extent, prior to three years ago, that was true, but new conditions have entered into the situation, so that the production of casein has become, in my opinion, what ought to be regarded as an infant industry.

A criticism has been made to the effect that the quantity of casein in America is not equal to that of casein imported from Argentina. That is a matter in dispute. The best information I have is that in California, where casein production has greatly increased, the producers make a quality equal to that from any other country. California has a climate conducive to the production of casein upon equal terms with our southern neighbor.

Mr. SHORTRIDGE. Mr. President, if the Senator will yield, I rise to corroborate what he has said, and to add that we produce better casein than is produced in any foreign country.

Mr. BLAINE. I would not deny to the Senator that satisfaction.

Mr. BORAH. Mr. President, I desire to suggest that California is not alone in that.

Mr. SHORTRIDGE. I should add that Idaho, Mr. President, produces casein equal but not superior to that of California.

Mr. BLAINE. Now, Mr. President, the Senator is making the speech I wanted to make. The matter as I view it is one in which there is an entire change of production in other parts of the United States. There are States besides California which produce good casein. The Senator from Montana [Mr. WALSH] represents one of them, Washington is one. At any rate, the climatic conditions of some sections of the United States are conducive to the production of casein equal in quality to that of any other country in the world.

Mr. VANDENBERG. Mr. President, will the Senator yield for just a question at that point?

Mr. BLAINE. Certainly.

Mr. VANDENBERG. If domestic casein has all of these remarkable credentials, why does the Senator think that in Michigan, for instance, where we use 25 per cent of the casein consumed in the country, and where the users are manufacturers of coated paper, who are desperately hard pressed in their business, and who, speaking generally, have been without profit for several years—why does he think that they are perfectly willing to pay a cent or a cent and a half premium to-day for Argentine casein?

Mr. BLAINE. I think I understand why.

Mr. VANDENBERG. I would be glad to hear the Senator's notion.

Mr. BORAH. Mr. President, I had a conversation with the Senator from Michigan a few days ago about that matter, and since then I have made some investigation and I find that casein made in California, Idaho, and Washington has been bringing in the market a premium over the Argentine casein.

Mr. VANDENBERG. If the Senator will permit, the situation in Michigan is precisely the contrary, as testimony brought to me within the week will disclose. Perhaps we are too far away from the golden West to enjoy the superior quality of the casein produced out there.

Mr. BORAH. The Senator's State is not so far from us as from Argentina. I think perhaps this is true: That the production of that quality of casein has not until within the last year or two been on a very large scale, but it is growing very rapidly.

Mr. BLAINE. Mr. President, as I have stated, I am not discussing the question of tariff rates on casein, but I am discussing the fact that the proponents of the flexible tariff maintain that we should retain that provision in the tariff law in order to meet changed conditions, emergencies. I think I can demonstrate, and have as far as the dairy products are concerned demonstrated, that the Tariff Commission does not meet changed conditions or emergencies. I am speaking now of dairy products. I have no doubt but that is true of all products. Here is the misconception the Tariff Commission has of the casein industry. I read from page 17 of their report to the President.

> That the industry producing casein considers it a by-product is evidenced by the fact that skimmed milk is converted into casein only when the market for other skimmed-milk products has been satisfied and when the price for casein will cover the conversion cost and return a profit to the manufacturer.

That might have been true three or four years ago, but there has been a change in the conditions with respect to the production of casein.

As has been attested here, those States possessing a certain climatic condition have been producing a very high grade of casein. In my own State and in States like Minnesota and Iowa with tremendous milk production—Wisconsin producing the bulk of the cheese and Minnesota and Iowa the bulk of the butter—the very center of the dairy production, we have been engaged primarily in the production of those special items of butter and cheese. But there are new forces which have come into those States, and it is those new forces which have produced a change in conditions and which have created an emergency. Those new forces are the present accumulation and centralization in the gathering of liquid milk by the one or two great milk-distributing agencies in that section, agencies which supply the entire amount of liquid milk for the cities of Chicago, Milwaukee, the Twin Cities—in fact, all the cities of that section. They are transporting that milk to Pennsylvania and New York. They have come into those States within the last two years and have purchased in some sections every warehouse that has been privately owned by individuals, purchasing likewise centralization plants and processing plants. They in turn send out their trucks to the farmers of those States and gather in the liquid milk, the whole milk. They separate the sweet cream and ship it to the industrial centers. They have created a new industry, not new as to its beginning, but new as to its development, thus paying the farmers a price per hundred pounds of milk based on the butterfat content and the price of butter. They in turn receive their profits not only out of the sweet cream and liquid milk that is for home consumption but from the skimmed milk converted into casein.

What is happening to the cooperative creameries of those States? Instead of the farmer skimming his milk at home and delivering the cream to the cooperative creamery or the privately owned creamery, they found themselves in the situation whereby, in order to meet the new conditions, it was necessary to send their trucks out into the country and there gather the liquid milk without any cream removed from it, paying the same price as do the private interests engaged in the distribution of milk in the large industrial centers. They found on their hands large quantities of skimmed milk that heretofore had gone for feed for stock upon the farms.

Those creameries therefore in order to exist, in order to continue the manufacture of butter as cooperative creameries or as small creameries owned by individuals, found it essential to establish the necessary machinery for the manufacture of casein. Therein is the emergency. If those plants can not have the proper protection in the development of that infant industry, then we will find that private interests which are able to centralize the power of distribution of liquid milk will drive every cooperative creamery and every privately owned creamery out of the dairy States of the Union.

Mr. SHORTRIDGE. Then we should have a proper tariff on casein.

Mr. BLAINE. I think so—not because of the difference in the cost of manufacture but because of the development of an infant industry essential to the preservation of our individually owned creameries and our cooperative creameries. The result has been that those creameries to-day are installing modern machinery by means of which they will be able to produce artificially dried curd that will be casein equal to that dried in the sun of Argentina. But that installing can not be done over night. Those creameries can not invest in that machinery until they are assured of some protection for the future. Therein was an emergency situation. There was a situation in which prompt action was demanded. But it took the Tariff Commission many months in which to make the investigation and the report to deny an increased tariff on casein.

Mr. SHORTRIDGE. Mr. President——

The PRESIDING OFFICER. Does the Senator from Wisconsin yield to the Senator from California?

Mr. BLAINE. I yield.

Mr. SHORTRIDGE. Assuming that to be so, is that any reason why we should do away with the law which would permit a speedy correction of an existing rate?

If the Senator will permit me, he speaks of this as an infant industry. In one sense, yes. While the learned Senator from North Carolina [Mr. SIMMONS] is present I wish to observe that Thomas Jefferson believed in a prohibitive tariff if it was necessary to develop an infant industry. If it shall become in my mind necessary to turn to his words hereafter, it will give me pleasure and I hope will be of some profit to the Senate to quote Thomas Jefferson in favor of a prohibitive tariff—not a competitive tariff, but a prohibitive tariff—if necessary to develop an infant industry.

Mr. BLAINE. I yielded to the Senator from California for a question. His discussion has so overshadowed his question that I would like to have the Senator restate the question.

Mr. SHORTRIDGE. My question was, If the Tariff Commission was slow in giving proper relief is that a reason why we should do away with the flexible provision of the tariff law? It is to be hoped that another commission would be more speedy.

Mr. BLAINE. That happens to be a question which I intended to discuss, and I may as well discuss it now as at any time.

Mr. SHORTRIDGE. Will the Senator permit me to say that I, of course, turned from that thought; but it was prompted by the fact that the Senator spoke of this industry as an infant industry, in which I fully agree with him in the one sense. Again I was prompted to add what I did.

Mr. BLAINE. I do not want to divert the Senator's attention from the question he asked. So far as I have had experience with administrative matters, I have observed that when we have an institution set up as a part of our governmental machinery and that institution does not function as it was originally designed to function and was hoped to function, after long years of experience with that institution—in this case seven years with the Tariff Commission—prudence, in my opinion, demands that the institution cease to be a part of our governmental machinery. If any portion of governmental machinery in its operations engages in mere futile gesture, then there is no reason why that institution should continue. When experience has developed as in the case of the Tariff Commission that it has not acted promptly, that the heavy hand of politics has been placed upon it making it impotent as a body to pass upon questions relating to taxation, I think the time has come in the history of American legislation when that institution should be abolished.

So far as dairy products are concerned, the record discloses, as I have outlined this afternoon, that the Tariff Commission and its operations have been utterly futile if not harmful. Had the situation as it had developed respecting the dairy industry come to the attention of Congress in 1924, and had Congress not depended upon this instrument of government, the Tariff Commission, I have not any doubt that the House of Representatives would have initiated legislation early in 1924 to take care of the emergency that had been created, but was not taken care of in the act of 1922 or the emergency tariff act. That action would have been prompt; at least it would have taken place during a session of Congress.

Mr. President, as one vitally interested as a representative of the dairy section of the United States and of every State potentially a dairy State, it seems to me the flexible tariff provision has been a stumbling block to the enactment of proper legislation for the protection of that industry.

It seems to me, as has been so eloquently said on the floor of the Senate time and time again, the power of taxation should remain in the Congress, and the Tariff Commission should be an instrumentality of Congress as a fact-finding body.

Mr. President, when an institution of the Government has become in the operation of its functions a futile thing, then, of course, there is no reason to retain it. It may be that maraschino cherries justify the existence of the Tariff Commission, but I know that the record does not justify the continuance of the commission so far as its activities have affected the dairy industry.

Mr. HEFLIN. Mr. President, I discussed the question of the flexible tariff in 1922; in fact, what I said on that occasion has furnished the ground work for a number of arguments which have been made in the Senate during this debate against transferring the taxing power of the Congress to the President. In discussing this subject on the occasion referred to I asked the question:

> Suppose some one were to suggest in this body that we confer upon the President the power to increase freight rates whenever the railroads desired them to be increased above the rates which might have been fixed by law. Would the Senator lodge in the hands of the President the power, upon the request of the railroads, to increase freight rates upon the people of the country? Why, he would say that was ridiculous, and yet it is proposed by his amendment to lodge the power with the President to increase the prices of the necessities of life, taking away from the legislative body the function given to it by the Constitution alone to levy taxes against the American people, and yet here it is proposed under the provisions of the bill to grant authority to the President to do the thing which the Constitution has said that Congress shall do.

Then I said:

> I want to say to the Senator from California—

That was the junior Senator from California [Mr. SHORTRIDGE], who had asked me a question—

> I want to say to the Senator from California, in conclusion, that I would not vote this power into the hands of any man under the sun. I am opposed to lodging in the hands of a President the right to increase the taxes against the American people. I do not care whether he is a Democrat or a Republican, the President has no business exercising the power, and no Congress has the right, until it has served notice on the American people that it intends to vote, if elected, to surrender the constitutional right of Congress to the Chief Executive, to surrender this sacred right of the American people. That is my position. I am not questioning the integrity of any President.
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> He may be conscientious in it, but that does not make it right. I do not want the President, be he Democrat or Republican, to have the power to increase the taxes of the people. He ought not to have and exercise any such power. That is my position upon the subject.

Mr. President, this question has been very thoroughly discussed by Senators on both sides of the Chamber. Although it is somewhat aside from the question here involved, let me say that I am going to support some of the increases proposed in tariff duties, but I want Congress to fix the rates. I do not think the President ought to have the power to do so. What Senator would be willing to lodge in the hands of the governor of his State the power to increase the taxes of the people of the State when the legislature had adjourned? I dare say there is not a Senator in this body who would be willing to give to the governor of his State the authority to increase the tax rate fixed by the legislature. Yet it is proposed to do that very thing in this bill in the case of the President of the United States.

I concede that such power has already been lodged with the President. I opposed it at the time it was given; I thought it was wrong then; I think it is wrong now.

I am in sympathy with those who take the position that the American Congress ought to provide some means of ascertaining the difference in the cost of production at home and abroad and then, having ascertained the facts, ought to levy a tax rate to meet that difference. I realize that we are living under conditions quite different from those which prevailed in America prior to the World War. The present system has been fastened upon the country and has been in operation for a long time. I realize that it is necessary to impose tariff rates, some of them of a substantial character, in order to take care of the interests of our own country. So far as I am concerned, Mr. President, I am, as I have indicated, going to vote to fix just such rates as may be necessary upon the products of my own section of the country, and I am not going to vote to permit injury to be done to the products of any other section. I think the time has come when East and West and North and South should work together all for the good of each and each for the good of all.

Mr. President, I am heartily in sympathy with the amendment offered by the Senator from North Carolina [Mr. SIMMONS] as amended by the amendment of the Senator from Nebraska [Mr. NORRIS]. I think it is well to have a Tariff Commission to find the facts. That is what the Congress wants to know. We want to act in an intelligent manner upon the various tariff rates which are proposed in Congress. Let the Tariff Commission, sitting during the recess of Congress and at other times, acquire all the information that it can; let it report that information to the Congress, and then let Congress study and act upon it.

Mr. President, if Congress met only once in 10 years there might be some excuse for taking this power out of the hands of Congress and reposing it in the hands of the President, but Congress meets every year, so there is no excuse, so far as that aspect of the question is concerned, for granting it to the President. The Tariff Commission can obtain information of every kind affecting the tariff and submit that information to Congress. If during the recess of Congress some circumstance shall arise that calls for action, Congress will be in session again in a short space of time and the commission can report back to Congress and Congress can take the action which may be necessary.

The founders of this Government thought it was wise to give this power to Congress. I do not think they ever contemplated permitting the President to exercise the taxing power. It is an exceedingly dangerous power. He who wields the taxing power holds the power of life and death over the business and enterprises of the people everywhere. So the Constitution conferred this power upon the Congress; and every bill raising revenue has to originate in the House of Representatives. Jefferson was right when he said that the Members of the House of Representatives should be required to go back every two years to renew their commissions at the hands of the people; and he gave as his reason for that conviction the fact that in the first instance they exercised the taxing power, which was an exceedingly dangerous power. So the Constitution requires members of the House of Representatives to go back

to their constituents every two years and renew their commissions in order that that body may keep in close touch with the people.

We have before us now in the pending bill a provision to enlarge this power in the hands of the President, having already conferred it upon him seven years ago. I opposed it then; I oppose it now. But, Mr. President, I am willing that the Tariff Commission shall report to the President and then that the President shall communicate to Congress by message regarding such report if at the same time the Tariff Commission shall be required to report to us. In that event we would be sure to get all the information either as to tariff increases or tariff decreases. It might happen, if the Tariff Commission were required to report only to the President and he could use his discretion as to submitting the report to the Congress, that he would only do so when he felt so disposed. So when we require the Tariff Commission to report to Congress at the same time it reports to the President we take a proper precautionary step to make sure that we shall obtain all the information that is available at the same time the President gets it so that both the executive department and the legislative department may have the facts upon which to act.

I think the Congress ought to receive such information and ought to act upon it. I can understand that growing out of competition between our country and some foreign country an acute situation may arise, but the time is so brief between the expiration of one session of Congress and the convening of another that there can be no excuse for raping the Constitution of the country; there can be no excuse for taking this power away from the legislative body, where the Constitution lodged it, and giving it to the President.

I am frank to criticize the Supreme Court. I do not think its decision sound on the question of the flexible tariff provision. I have a right to my opinion about it, and I dare to express it in this body. I do not see how any court can construe the Constitution of the United States as meaning that the President may exercise the taxing power. We fix a tax rate at one figure and, as the lawmaking body of the Nation, we put our seal upon it; then it goes up to the President, and the President, if he chooses, may raise that rate. I do not care what Supreme Court judge may decide to the contrary, that is nothing more nor less than the exercise of the taxing power. It is bound to be that; it is that upon its face. I think our courts had better be a little careful in their construction of that great document.

I know there are many people who would like to have such power conferred, but, in the first place, I do not think we have a right to confer it upon the President; and, in the second place, I do not think it is wise to confer it upon him. I think it ought to remain in the hands of the Congress.

Mr. President, that is about all I care to say upon the subject at this time; but before I conclude I desire to repeat that there are commodities produced in my section of the country which need an increase in tariff duties. Some of them have not been fairly treated in this bill. I hope before we finish its consideration that justice will be done to those products. I have my idea about how the tariff ought to be handled. My idea is the one which the Constitution expresses—that Congress and not the President of the United States should fix tariff rates.

PROPOSED INVESTIGATION OF LOBBYING ORGANIZATIONS

Mr. DENEEN. Mr. President, out of order, I ask leave to report back favorably, with amendments, from the Committee to Audit and Control the Contingent Expenses of the Senate, Senate Resolution 20, to investigate the activities of lobbying associations and lobbyists in and around Washington, D. C.; and I submit a report (No. 39) thereon. I ask unanimous consent for the immediate consideration of the resolution.

The PRESIDENT pro tempore. Is there objection?

Mr. LA FOLLETTE. Let it be read.

The PRESIDENT pro tempore. The resolution will be read.

The legislative clerk read the resolution as proposed to be amended; and there being no objection, the Senate proceeded to its consideration.

The amendments were, on page 1, after the preamble, to strike out "*Resolved*, That a special committee to be appointed by the President of the Senate consisting of three members is hereby authorized. Said" and in lieu thereof to insert "*Resolved*, That the Committee on the Judiciary of the United States Senate, or a subcommittee thereof to be appointed by the chairman of the"; on page 2, line 8, before the word "and," to insert "at a cost not exceeding 25 cents per 100 words, to report such hearings as may be had on any subject before said committee or subcommittee thereof"; in line 11, after the word "contingent," to strike out "expenses" and insert "fund"; and in line 11, after the word "Senate," to insert "For the purposes of this investigation the expenditure of $10,000 is authorized, or such part thereof as may be necessary," so as to make the resolution read:

Whereas it is charged that the lobbyists, located in and around Washington, filch from the American public more money under a false claim that they can influence legislation than the legislative branch of this Government costs the taxpayer; and

Whereas the lobbyists seek by all means to capitalize for themselves every interest and every sentiment of the American public which can be made to yield an unclean dollar for their greedy pockets: Now, therefore, be it

Resolved, That the Committee on the Judiciary of the United States Senate, or a subcommittee thereof to be appointed by the chairman of the committee, is empowered and instructed to inquire into the activities of these lobbying associations and lobbyists.

To ascertain of what their activities consist, how much and from what source they obtain their revenues.

How much of these moneys they expend and for what purpose and in what manner.

What effort they put forth to affect legislation.

Said committee shall have the power to subpœna witnesses, administer oaths, send for books and papers, to employ a stenographer, at a cost not exceeding 25 cents per 100 words, to report such hearings as may be had on any subject before said committee or subcommittee thereof, and do those things necessary to make the investigation thorough.

All the expenses for said purposes shall be paid out of the contingent fund of the Senate. For the purposes of this investigation the expenditure of $10,000 is authorized, or such part thereof as may be necessary.

Mr. BROOKHART. Mr. President, I desire to ask the Senator from Arkansas [Mr. CARAWAY] whether the resolution is broad enough to cover investigation of the social lobby?

Mr. CARAWAY. Yes, sir; it is broad enough to investigate anything in which one might feel interested.

The amendments were agreed to.

The resolution, as amended, was agreed to.

The preamble was agreed to.

RECESS

Mr. SMOOT. I move that the Senate take a recess until 11 o'clock to-morrow.

The motion was agreed to; and (at 4 o'clock and 35 minutes p. m.) the Senate took a recess until to-morrow, Wednesday, October 2, 1929, at 11 o'clock a. m.

SENATE

WEDNESDAY, *October 2, 1929*

(Legislative day of Monday, September 30, 1929)

The Senate met at 11 o'clock a. m., on the expiration of the recess.

Mr. JOHNSON obtained the floor.

Mr. FESS. Mr. President, will the Senator yield to enable me to suggest the absence of a quorum?

The VICE PRESIDENT. Does the Senator from California yield for that purpose?

Mr. JOHNSON. I do.

Mr. FESS. I suggest the absence of a quorum.

The VICE PRESIDENT. The clerk will call the roll.

The legislative clerk called the roll, and the following Senators answered to their names:

Allen	Fletcher	Keyes	Simmons
Ashurst	Frazier	King	Smith
Barkley	George	La Follette	Smoot
Bingham	Gillett	McKellar	Steck
Black	Glass	McMaster	Steiwer
Blaine	Glenn	McNary	Stephens
Blease	Goff	Metcalf	Swanson
Borah	Goldsborough	Moses	Thomas, Idaho
Bratton	Gould	Norris	Thomas, Okla.
Brock	Greene	Nye	Townsend
Brookhart	Hale	Oddie	Trammell
Broussard	Harris	Overman	Tydings
Capper	Harrison	Patterson	Vandenberg
Caraway	Hastings	Phipps	Wagner
Connally	Hatfield	Pine	Walcott
Copeland	Hayden	Pittman	Walsh, Mass.
Couzens	Hebert	Ransdell	Walsh, Mont.
Cutting	Heflin	Reed	Warren
Dale	Howell	Robinson, Ark.	Waterman
Deneen	Johnson	Robinson, Ind.	Watson
Dill	Jones	Schall	Wheeler
Edge	Kean	Sheppard	
Fess	Kendrick	Shortridge	

Mr. FESS. I announce that my colleague [Mr. BURTON] is still detained from the Chamber on account of illness, and ask that the statement be allowed to stand for the day.

Mr. SCHALL. I wish to announce that my colleague the senior Senator from Minnesota [Mr. SHIPSTEAD] is still detained from the Senate on account of illness. I ask that this announcement may stand for the day.